

# The Gazette of India



## EXTRAORDINARY

### PART II—Section 3

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#### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 13th January 1958/Pausa 23, 1879 Saka*

S.R.O. 840.—Whereas the election of Shri Rajaram Balkrishna Raut as a member of the House of the People from the Kolaba Constituency of that House was called in question by an Election Petition presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Shri Narayan Yashwant Nene, Pen, District Kolaba, Bombay State;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 108 of the said Act, sent a copy of its order in the said Election Petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE SHRI M. S. APTE, ELECTION TRIBUNAL, ALIBAG,

DISTRICT: KOLABA (BOMBAY STATE)

ELECTION PETITION NO. 346 OF 1957

Shri Narayan Yeshwant Nene, age \_\_\_\_\_ resident of Pen, Dist Kolaba, Bombay State—*Petitioner.*

*Versus*

Shri Rajaram Balkrishna Raut, age \_\_\_\_\_ Resident of Bombay, Bombay State—*Respondent.*

Shri R. B. Kotwal with Sarvashri J. V. Lele, M.A., Patil and G. V. Limaye, Pleaders, for the petitioner.

Shri K. S. Daundkar, with Sarvashri Sule, Kalc, V. G. Ranade and D. N. Patil, Pleaders for the respondent.

#### JUDGMENT

The petitioner is a resident of Pen in this District. In the last general elections he was one of the electors from the Kolaba Parliamentary Constituency in Bombay State which was a single-member Constituency. He is a Congressman since 1930 and in the last general elections he was the Chairman of the District Election Committee of the Congress. In this election the respondent, who is a member of the Peasants and Workers Party, was a candidate for the Parliamentary seat from this Constituency and he contested the election on the ticket of Samyukta Maharashtra Samiti (which would hereafter be referred to simply as Samiti), which was not a political party as such recognised by the Election Commission but was a coalition of all the parties opposed to the Congress in Maharashtra forming a united front against the Congress on the common issue of formation of separate State of Maharashtra with Bombay City. Shri Dattatreya Kashinath Kunte was his rival Congress candidate. The election was contested by these two candidates only and the respondent

was returned by a margin of 60,000 votes over his rival candidate Shri Kunte. This Parliamentary Constituency comprised of the Talukas of Mangaon, Roha, Pen Karjat, Khalapur, Alibag and the Mahals of Mhasala, Shriwardhan, Murud, Sudhagad which is generally known as Pali as the Headquarters of the Mahal are located at Pali, and part of Uran Mahal and part of Mahad Taluka consisting of about 50 to 60 villages. In a part of this Constituency polling was held on 2nd March 1957; in another part on 6th March and in the third on 11th March. Votes were counted on 14th and 15th of the same month at Pen and on the 15th March the respondent was declared to have been duly elected. The petitioner as an elector from this Constituency presented to the Election Commission this petition under Section 81 of the Representation of the People Act, 1951 as modified upto 1st August 1956, before the expiry of statutory period of 45 days from the date of respondent's election. The Election Commission caused a copy of the petition to be published in the Official Gazette dated 23rd May 1957, at page 1687 as required by Section 86 of the said Act and has referred the petition for trial to this single-member Tribunal constituted by them.

2. The petitioner challenges the election of the respondent on several grounds alleging commission of different corrupt practices such as bribery, undue influence, use of appeal to the national symbols and systematic appeal to the voters on the ground of community, race etc. and publication of false statements about the character and conduct of the Congress candidate by the respondent, his authorised agents and other persons acting with his consent. The petitioner has furnished details of these practices by giving specific instances of the different practices in sub-paras A to G of clause 8 of his petition. As the particulars furnished in these paras were found to be insufficient, this Tribunal by its order dated 9th August, 1957 called upon the petitioner to furnish further particulars and in compliance with that order the petitioner submitted at Exh. 12 further particulars. Even after these particulars were furnished, the allegations in paras 8 B (1), (2), (8), (9), (11), (12), (13); D (2); F and G (1) (a), (b), (c) were found to be vague and wanting in necessary particulars. By an order Exh. 72, therefore, these paras, the allegations in which were found to be still vague, were treated as struck off and the petition was proceeded with only respecting the remaining allegations. The allegations which, therefore, finally survived for trial are shortly as follows.

3. It is alleged in the first instance in para 8A (1) and (2) that the respondent through his agents distributed money among his electors at places such as Dighode, Veshvi, Jui, Vadlav, Vashi, Borze and Johe on or about 5th March 1957, and also on or about 2nd March 1957 gave meals and articles such as mutton, jaggery, turbans and banians to the electors from and round about Neral including those of the Scheduled Tribes for securing votes for the respondent. The names of the different agents who committed these acts have also been given. Then para 8 B deals with different instances of disturbances created by the respondent's agents and workers, at the meetings taken by this and other Congress candidates for the State Assembly at Khalapur, Chauk and Karjat on 2nd February, 1957, and at Karjat and Sajgaon by a Congress Leader Shri S. S. More on 10th February, 1957 and one more taken by Shri Kunte again at Chauk on 3rd March 1957. The names of the respondent's alleged agents who are said to have so disturbed these meetings are also furnished. It is alleged that the respondent, his agents and workers published and affixed certain objectionable posters as described in para 8 B (14) and made an appeal to the voters to vote for the candidates of the Samiti with a sinister motive of gaining undue influence on the mind of the electors. It is also stated that writings were written at almost all places in the Constituency that a vote for Congress was a vote for firing and exhortation was made to the electors to vote for Samiti candidates by appealing to them to remember and not to forget 105 martyrs, namely those who lost their lives in the Police firings in Borubay during the Samyukta Maharashtra upheaval. Then, in para 8 C it is alleged that the respondent, his agents and other workers made a systematic appeal to the voters on the ground of community for the furtherance of the election prospects of the respondent. It is stated that they appealed to the voters saying that the Congress Party was the enemy of the entire community of Maharashtra and the Congress candidates were the assassins of Maharashtra and Maharashtra community and, therefore, a vote for them was a vote against Maharashtra and Maharashtra community. Para 8 D alleges that respondent and his workers also made an appeal to the voters to vote for the respondent by making an appeal to a national symbol, namely a picture of Chhatrapati Shivaji Maharaj. It is further alleged in para 8 E that one Shri Bhave, who was an adherent of Samiti, issued a pamphlet containing false statements respecting the character, conduct and candidature of the Congress candidates for the Parliament and the State Assembly with a view to prejudice their election prospects. Lastly, it is alleged that the respondent took assistance of one Shri G. S. Katkari, who was in Government service as a primary teacher under the District School Board, Kolaba District. The petitioner, therefore, alleges that because of these corrupt practices the election of the Congress candidate has also been materially affected and prays that the respondent's election be declared void.

4. The respondent was served with a notice by the Election Commission before this petition was received by this Tribunal and he was directed to appear before this Tribunal on 2nd July 1957. In response to this notice the respondent appeared and on that very

day submitted his written statement at Exh. 4. He raised preliminary objections to the maintainability of the petition contending, inter alia, that the petition did not comply with the provisions of Section 83(1) (b) and (c) of the Representation of the People Act inasmuch as full particulars of corrupt practices alleged were not set forth with full statement of the names of the parties who were alleged to have committed them and the dates and places thereof and that the corrupt practices alleged in paras 8 B (3) to (7), (10), (14) and (16) and 8 C (1), 8 D (1), 8 E (1) (a) and 8 C (2) do not amount to corrupt practices under Section 123 of the said Act. The respondent further denied to have committed these diverse corrupt practices either by himself or by his agents or workers. It was also denied that the persons who are alleged to have committed the different acts were the agents or workers of the respondent. As regards the allegation that the respondent secured assistance of Shri Katkari, besides denying the fact of having taken any assistance from him, it is contended by the respondent that a primary teacher under a District School Board is not a Government servant. It is further stated that Shri Katkari, who was also a Samiti candidate for the reserved seat to the State Assembly in this very election, had already resigned his post as a teacher before filing of nominations on 29th January, 1957 and, therefore, he was not in such service even at the time he was alleged to have given assistance to the respondent. Finally, it was stated that the respondent having been returned by an overwhelming majority of 68,000 votes against his rival candidate, the result of the election is not at all materially affected. On these grounds the respondent maintains that his election is perfectly valid and that, therefore, the petition might be dismissed with costs.

5. Among the diverse contentions raised by the respondent in his written statement (Exh. 4) a contention was made that the various allegations contained in the petition were vague and the petition was, therefore, not maintainable. The issues arising on these pleadings were originally framed at Exh. 5. The respondent then at Exh. 7 filed an application praying for trial of the issues on this and some other points as preliminary issues before taking up other issues of fact for consideration. Such a practice of piecemeal trial being undesirable, I refused to try these issues as preliminary issues but as I found that in respect of some of the allegations contained in the petition further particulars were necessary, I, by an order dated 9th August, 1957 passed below Exh. 7, called upon the petitioner to furnish such full particulars as far as was possible for him as were lacking. In pursuance to that order the petitioner filed the particulars at Exh. 12, as noted above. The respondent then presented an application at Exh. 69 on 9th September 1957 contending that even with the particulars furnished the allegations were still vague and incomplete and he prayed for striking off such of the allegations which lacked in necessary details. Parties were then heard and this Tribunal passed an order at Exh. 72 on 10th September, 1957 treating some of the paras as struck off, as already noted, and proceeded with the trial of the rest. The issues originally framed at Exh. 5 were then recast as follows:—

- (1) Does the petition comply with the provisions of Section 83(1) (c) of the Representation of the People Act, 1951? If not, is the petition tenable?
- (2) Is the petition untenable in law for want of full particulars as contemplated by Section 83(1) (b) of the Representation of the People Act, 1951?
- (3) Do allegations made in para 8 B (3) to (7), (10), (14) to (16) and 8 C (1), 8 D (1), 8 E (1) (a), (b) and 8 C (2) amount to corrupt practices under section 123 of the said Act?
- (4) Whether the petitioner proves that bribery was practised in his election by respondent's agent on 5th March 1957 as stated below?
  - (i) At Dighode, Veshvi and Jui, Hasuram Pandurang Mumbaikar offered and distributed money to electors;
  - (ii) At Vadhav money was offered and distributed by Raghunath Ramchandra Mhatre;
  - (iii) At Vashi money was offered and distributed by Namdeo Changu Madhavi;
  - (iv) At Borze money was offered and distributed by Shankar Arjun Mhatre;
  - (v) At Johe money was offered and distributed by Sarvashri Namdeo Changu Madhavi and Raghunath Ramchandra Mhatre?
- (5) Does the petitioner further show that the abovenamed persons were the authorized agents of the respondent?
- (6) Does the petitioner prove that Sarvashri S. P. Mahale, S. M. Arekar and Madhu Bhadsavale served meals at Neral to the electors from several villages in the vicinity of Neral on the 2nd March 1957?
- (7) Does the petitioner also show that Sarvashri Vasant Raut, the son of the respondent, and the above three persons distributed articles such as turbans, banians, among the electors of the Scheduled Tribes from villages mentioned in para 2 of Exh. 12?

(8) Does the petitioner further show that Vasant Raut, Mahale, Arekar and Bhadavale were acting as agents of the respondent when committing these acts?

(9) Does the petitioner prove that on 2nd February, 1957 Sarvashri Palande, Shankar More, Govind Sonu Katkari disturbed the meeting of the Congress candidate Shri A. T. Patil and Shri B. H. Valckar as alleged in para 8 B (3) of Exh. 1 and para 3 of Exh. 12?

(10) Is it proved that Palande, Shankar More and Govind Sonu Katkari were the agents and workers for the respondent during his election campaign?

(11) Does the petitioner prove that on 2nd February 1957 a meeting called by the Congress candidates including Shri Kunte was disturbed by Palande, Balkrishna Patil and Shankar More as alleged in para 8 B (4) of Exh. 1 and para 4 of Exh. 12?

(12) Is it further proved that the persons named in the above issue were in doing so working for the respondent?

(13) Is it proved that on 2nd February, 1957 Mahale, and Arekar disturbed a meeting convened by Shri Kunte and other Congress candidates as stated in para 8 B (5) of Exh. 1?

(14) Whether it is proved that in doing so Mahale and Arekar were acting as authorised agents of the respondent?

(15) Does the petitioner prove that on 10th February, 1957 a meeting of the Congress candidates which was to be addressed by Shri S. S. More at Karjat was disturbed by Arekar, Manohar Raut, Mule, Dabholkar, Mahadeo Patil and Appa Pendase as alleged in para 8 B (6) of Exh. 1 and para 6 of Exh. 12?

(16) If so, whether it is proved that in doing so, the above persons or any of them were acting as agents and workers of the respondent?

(17) Is it proved that on 10th February, 1957 another such meeting held at Sajgaon was also disturbed by threatening the people by Palande and Balkrishna Patil as alleged in para 8 B (7) of Exh. 1.

(18) If so, whether it is shown that those who so disturbed the meeting acted as workers for the respondent?

(19) Is it proved that on 3rd March 1957 a meeting held at Chauk and which was to be addressed by Shri Kunte, a Congress candidate, was also disturbed by resorting to violent methods as alleged in para 8 B (10) of Exh. 1, by Vasant Raut?

(20) Are the allegations in para 8 B (14) of Exh. 1 and para 11 of Exh. 12 proved?

(21) If so, whether it is proved that the several acts mentioned in these paras were committed by the respondent or any person acting in his interest?

(22) Does the petitioner prove the allegations made in para 8 B (15) of Exh. 1 read with para 11 of Exh. 12?

(23) Does the petitioner prove that a continuous, systematic and emotional appeal was made to the electors by the respondent and his agent Shri Bhave as alleged in para 8 B (16) of Exh. 1 read with para 11 of Exh. 12?

(24) Is it proved that Shri Bhave acted in doing so, as the agent of the respondent?

(25) Does the petitioner prove that the respondent made a systematic appeal on the ground of community to his electors as alleged in para 8 C (1) of Exh. 1 read with para 12 of Exh. 12?

(26) Is it proved that the respondent during his election campaign made use of an appeal to any national symbol as stated in para 8 D (1) of Exh. 1, at Kalwe and Vadav?

(27) Does the use of the picture of the bust of Shri Chhatrapati Shivaji amount to use of or an appeal to a national symbol?

(28) Is it proved that Shri Bhave made and published false statements regarding the character, conduct and candidature of the Congress candidates namely Shri D. K. Kunte and Shri A. T. Patil as alleged in para 8 E (1) (a) and (b)?

(29) If so, whether Shri Bhave acted as a worker and agent of the respondent?

(30) Is it proved that the respondent secured the assistance of Shri G. S. Katkari for the purposes of his election or in furtherance of the prospects of his election?

(31) Is it proved that the said Shri G. S. Katkari was a Government servant within the meaning of Section 123 clause (7) of the Representation of the People Act, 1951?

(32) Is it proved that any of the above acts committed either by the respondent or by his workers or agents or by any person acting in his interest have materially affected the result of the election of the Congress candidate Shri D. K. Kunte?

(33) Whether the election of the respondent is void?

(34) What order?

My findings are:-

(1) In the affirmative on both the parts.

(2) In the negative.

(3) In the negative.

(4) In the negative on all the 5 parts.

(5) Does not survive, but if finding is necessary, in the affirmative in respect of Raghunath Ramchandra Mhatre and Namdeo Changu Madhavi and in the negative in respect of Hasuram Pandurang Mumbalkar and Shankar Arjun Mhatre.

(6) In the negative.

(7) In the negative.

(8) Does not survive, but if a finding is necessary, in the affirmative in respect of Vasant Raut, Mahale, Arekar, and in the negative in respect of Bhadsavale.

9, 11, 13, 15, 17, 19) In the affirmative.

(10, 12, 14, 16, 18) Vasant Raut, Mahale, Arekar, Palande, Shankar, alias Raghunath Bhiva Moje and Govind Sonu Katkari only are proved to be the agents of the respondent, but not the rest.

(20) In the negative.

(21) Does not survive.

(22) Such writings were written and published in the issues of daily paper Maratha referred to in para 11 of further particulars Exh. 12, but not in those of Kulaba Samachar, Konkan Krishivall and Kesari.

(23) In the negative.

(24) Does not survive, but if a finding is necessary, in the affirmative.

(25) In the negative.

(26) In the negative.

(27) In the negative.

(28) In the negative.

(29) Does not survive, but if a finding is necessary, in the affirmative.

(30) Does not call for any finding.

(31) Does not call for any finding.

(32) Does not call for any finding.

(33) Does not call for any finding.

(34) As per the final order.

#### REASONS

6. Issue No. 1.—The first issue relates to the respondent's contention that the petition does not comply with the requirements of clause (c) of Section 83(1) of the Representation of the People Act and is, therefore, untenable. That provision, so far as is material for our purpose, lays down that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings. The relevant provision of the Civil Procedure Code is contained in Rule 15 of Order 6. Clause 1 enjoins that save as otherwise provided by any law for the time being in force every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Then clause (2) says that the person verifying shall specify, by reference to the numbered paragraphs of the pleadings what he verifies to his own knowledge and what he verifies upon information received and believed to be true. Lastly, in clause (3) it is provided that the verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

7. The respondent finds fault with the verification in the present case on the ground that in this verification the petitioner has not specified by reference to numbered paragraphs of the pleading what facts he purported to verify on his own knowledge and what he verified upon the information received and believed by him to be true. Upon this contention when the verification as it originally stood was examined, it was found to be defective. The verification originally stood as follows:—

"I Narayan Yeshwant Nene, Hindu, aged about 53 years, a social worker, residing at Pen, District Kolaba, Bombay State do hereby solemnly affirm, that the contents of above paragraphs 1 to 10 and 12 are true to my knowledge, belief and information."

Solemnly affirmed at Bombay, this 26th day of April 1957." It is clear that this verification does not comply with the above provisions of law. By the order passed by this Tribunal directing the petitioner to furnish further particulars he was also asked to remove this defect. Accordingly, the petitioner substituted the following verification:—

"I Narayan Yeshwant Nene, Hindu, aged 53 years, a social worker residing at Pen, District Kolaba, Bombay State do hereby solemnly affirm that the contents of the above paragraphs 1, 2, 3, 4, 5 and 6 are all true to my own knowledge and the contents of paragraph 7 and further particulars of that paragraph given in paragraph 8, and all sub-clauses are true partly to my own knowledge and information received from others and believed by me to be true. The contents of paragraphs 9, 10 are true to my own knowledge, and that I solemnly affirmed and signed the petition at Bombay this 26th day of April 1957."

8. The objection that is now raised to this amended verification is that it too is defective in that it only states that the contents of paragraph 7 and further particulars of that paragraph given in para 8 and all its sub-clauses are true partly to the knowledge of the petitioner and partly to the information received by the petitioner from others and believed by him to be true, but it does not specify which of these facts belong to the first category and which belong to the latter. It is submitted by Mr. Daundkar, the learned Advocate for the respondent, that the petitioner should have further disclosed in this verification as to what particular portion from these various paragraphs and sub-clauses thereof was true to his knowledge and what was true to his information and belief only. The above provision of the Civil Procedure Code, however, in my opinion, does not support this contention. It does not lay down that the verification should go into the details of the various paragraphs and again contain reference to the different portions or parts of the paragraphs and show as to which of the different statements are verified on knowledge and which of them are verified on information received and believed to be true. In my opinion, therefore, the contention is ill-founded. It has also to be borne in mind that a petitioner or a suitor cannot be non-suited only because the verification is defective. My finding on the first part of issue No. 1 is in the affirmative. It, therefore, follows that the petition is tenable and hence finding on its second part also would be in the affirmative.

7. *Issue No. 2.*—The next contention raised on behalf of the respondent is that full particulars of the several allegations of corrupt practices made in the petition are not fully set forth as required by sub-clause (b) or sec. 83(1) of the Representation of the People Act. In my opinion, this contention no longer survives inasmuch as after the petitioner furnished particulars called for from him, I, after hearing both side and examining the pleadings and particulars, have already held that the allegations and statements as given in the original petition and as supplemented by the further particulars, were complete in themselves, except those in certain of the paragraphs indicated in that order at Exh. 72. Those paragraphs therefore, which were found wanting in particulars have been already treated as struck off and the trial has proceeded only in respect of the remaining allegations. That being so, for the reasons already recorded in my order at Exh. 72 dated the 10th September 1957, I hold that the contention is no longer tenable. My finding on issue No. 2 is, therefore, in the negative.

10. *Issue No. 3.*—This issue is a comprehensive one embracing all the different practices alleged and is one of law. It would, therefore, be convenient to deal with this question namely whether each of the different acts alleged do or do not constitute a corrupt practice within the meaning of sec. 123 of the Act. I therefore propose to deal with this issue after discussing the various issues of fact.

11. *Issue No. 4.*—The first allegation made by the petitioner is that the respondent in his election practised bribery. The allegations in this respect are contained in para. 8A (1) and (2) of the petition and paras. 1 and 2 of further particulars at Exh. 12. It is stated that on or about 5th March 1957 in the village of Dighode, Veshvi and Jui which are from Uran Mahal and were part of the Constituency in question, the respondent's agent Shri. Hasuram Pandurang Munubaikar offered and distributed money to the electors for securing votes for the respondent. Similarly it is stated that at Vadhad one Raghu Nath Ramchandra Mhatre, at Vashi and Jui one Namdeo Changu Madhavi and at Borze one Shankar Arjun

Mhatre offered and distributed money to the electors for the same purpose. These four villages are from Pen Taluka and the persons who distributed money are alleged to be the agents or workers of the respondent. The respondent denies the fact of any money having been so distributed by these persons as well as the fact that these persons were his agents. It is not at all disputed that such giving of money to the voters in order to procure or secure their votes is a corrupt practice of bribery as defined in clause (1) of section 123 of the Representation of the People Act. If, therefore, the petitioner would succeed in establishing these allegations, there can be no doubt that the respondent's election will have to be declared void under section 100 (1) (b) which says that subject to the provisions of sub-section (2) if the Tribunal is of opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the Tribunal shall declare the election of the returned candidate to be void. It may be borne in mind that it is not the allegation of the petitioner that the respondent himself personally paid any such bribe to any person or voter. What is alleged is that the persons who paid money were the agents of the respondent and that they committed this corrupt practice on behalf of the respondent. The petitioner will have therefore to establish firstly that these persons or any of them in fact paid money as alleged and that they or any of them in doing so acted as election agent of the respondent or at least that they had in that behalf the consent of the respondent or any of his election agents. In the first instance, I will deal with the evidence and determine whether any of the incidents are proved and then would examine whether the persons who would be so proved to have paid bribe were respondent's election agents or were persons working with the consent either of the respondent or of any of his election agents.

12. Taking up the allegations with respect to Hasuram Pandurang Mumbaikar, it may be recalled that it has been alleged that he distributed money at three places namely Dighode, Veshvi and Jui. The evidence of the petitioner in this respect consists of the oral testimony of his witnesses Ramchandra Ganpat Thakur (Exh. 161), Gomaji Padya (Exh. 149) and Baloba Ganpat Bhoir (Exh. 162). Of these Ramchandra Ganpat Thakur speaks about the payment at Dighode, while the remaining two speak about that at Jui. There is no witness testifying to the incident at Veshvi. The petitioner has no personal knowledge relating to any of the alleged corrupt practices. His information is solely based on what the witnesses had reported to him. So the allegation with regard to the incident of bribery at Veshvi can very well be disposed of at once as being not proved.

13. With regard to the incident at Dighode, the evidence of the petitioner's witness Ramchandra Ganpat Thakur who hails from Dhutum is that on the 5th March, that is a day prior to the day of polling when he had been to Dighode between 10-30 to 11 A.M. he noticed Hasuram Mumbaikar addressing a meeting of the villagers of that place. In this meeting which was attended by about 40 to 50 villagers Hasuram said to have appealed to the voters not to vote for the Congress candidates inasmuch as although they were returned in the previous election, that party had totally failed to do anything for the amelioration of their lot. He then exhorted the audience to vote for the respondent and produced a wad of notes and handed it over to one Mahadeo Joma, a resident of Dighode. Who this Mahadeo Joma is, is not known. It also appears strange as to how this witness who comes from Dhutum happened to be at Dighode at this time exactly. According to the witness, he had at this time gone to his sister's house which adjoins the Math where the meeting was in progress. The respondent has examined Babu Ambaji Gharat of Dighode, the brother-in-law of this witness, at Exh. 194. Charat denies that Ramchandra had so visited his house. He also stated that no such meeting had ever been held at the Math on the day previous to the day of polling. The evidence adduced by the petitioner moreover is mere hear say as against the respondent. Even if therefore it is accepted, it can at the most go to show that Hasuram made such a statement. But the fact whether that amount was paid really by the respondent or whether Hasuram made such a statement on his own responsibility or he falsely so stated is in doubt. We have no means to test the credibility of Hasuram's statement since he is not examined by either party. It is possible, therefore to believe the evidence of petitioner's witness. An allegation of bribery is a very serious allegation and must be proved by equally cogent and strong evidence.

14. Then as for this type of corrupt practice said to have been resorted to at Jui, the petitioner's evidence consists of the testimony of his witness Gomaji Padya who hails from Chirle. The witness was a canvasser for the Congress candidate Shri. A. T. Patil. He states in his evidence at Exh. 149 that he and one Ramdas Narayan Thakur, another Congress canvasser, had on the 4th March been to Jui and there when Ramdas asked the villagers, about 50 to 75 in number, who had collected in the courtyard of Ramdas's brother-in-law, they disclosed that they were unable to vote for the Congress candidates since they had received a promise from Hasuram Pandurang Mumbaikar that if they would vote for the respondent, he would secure a donation of Rs. 150 from the respondent for the completion of construction of the school building in the village which had remained incomplete for want of funds. To lend support to the evidence of this witness, another witness Baloba Bhoir of Vindhane—a village near Jui—is examined at Exh. 162 who testifies to the effect that on the 5th March he had been to Jui to see one Maya Ganpat Patil of that place with whom he had some private business. It is stated by him that when he went to the house of Maya,

he was told by his family members that Maya had been to the house of one Ganpat Posha Sardekar from the same village. The witness therefore went to that house where he could meet Maya. According to him, Hasuram Mumbaikar was then present there and he in his presence handed over a sum of Rs. 150 to Ganpat Posha. Thus it is stated that the promise which was said to have been given by Hasuram to the villagers on the previous day was fulfilled.

15. In my opinion, this evidence too suffers from the same infirmities from which the evidence in respect of the alleged bribery at Dighode suffers. Admittedly both these witnesses are Congress workers and acted as Polling agents for Congress candidates. Naturally, they have a bias in favour of the petitioner. In the cross-examination of Gonnaji it is revealed that he has been proceeded against in a Chapter case. It also appears that the witness was once even bound down. The witness did not show faciness of admitting this fact. The respondent has produced a certified copy at Exh. 151 which shows it. In my opinion, therefore, this incident too cannot be said to have been satisfactorily established.

16. The evidence relating to the incident at Vadhav is that of Baliram Gana (Exh. 141). The witness states that on the evening of 5th March last in pursuance to an announcement made by the villager caller he and some other villagers attended a meeting of Radhakrishna temple in the village. In that meeting Raghunath Ramchandra Mhatre, a Samiti worker is said to have appealed to the voters to poll their votes in favour of Samiti candidates in general and in favour of the respondent in particular. It is stated that Raghunath declared in that meeting that Rs. 200/- had been given to him by the respondent for the benefit of the entire village. The witness appears to have a close association with the Congress candidate Shri A. T. Patil. It also appears that he is an ex-convict in a murder case. Admittedly the witness is on hostile terms with Raghunath Ramchandra who after obtaining a decree for possession of certain lands, has in execution dispossessed the witness from them. From what has appeared on record it also appears that such a meeting could not possibly have been held on the evening of the 5th, since there is evidence of Manikrao Jagtap examined at Exh. 188 on behalf of the respondent, that in this very temple a polling booth was arranged. Mr. Jagtap was the Presiding Officer for the polling which was held in this village on the 6th. From his evidence it is clear that he and his staff had already occupied part of the temple and had even arranged a booth before the evening of 5th. It is, therefore, ordinarily improbable that a meeting would be allowed to be held at such a close distance from the booth on the evening previous to the day of polling. This evidence led by the petitioner, therefore, fails to impress me. Consequently I hold that this incident too is not proved.

17. Petitioner's witness Jagannath Bhau Patil of Vashi examined at Exh. 148 speaks about the allegations of bribery said to have been practised at that village. It is stated by the witness that on the 4th March a meeting was taken in the village temple on behalf of the Samiti and in that meeting Namdeo Changu Madhavi—a worker of respondent—appealed to the voters to vote for the respondent and other Samiti candidates and declared that the respondent had paid Rs. 200 for securing all the votes from that village. He then exhorted the villagers to cast their votes enblock for the respondent. This witness besides being a close relation of the Congress candidate Shri A. T. Patil, appears to have been obliged by the Congress party. He was a D.L.B. Contractor which was dominated till recently by the Congress. He admits that he received about 30 to 40 contracts from the D.L.B. during the last 5 years. He also acted as Polling Agent for the respondent's RIVAL candidate Shri Kunte in the last elections. The witness is thus highly interested. Namdeo Changu Madhavi on the other hand, has been examined by the respondent at Exh. 189. He totally denied to have ever taken any such meeting or even to have made any such announcement as attributed to him. In order to make the story plausible a suggestion was made that Namdeo used to be entrusted with village funds. But the suggestion appears to be without substance in view of the fact that the witness is admittedly heavily indebted to the Citizen Bank and his entire property has been distrained for that. It appears improbable that such a villager who is knee deep in debt would ever be chosen to be a treasurer of village funds. There being therefore no satisfactory evidence about this incident as well, I am unable to accept the allegation.

18. Lastly, I come to the incident at Borze. The witness who speaks about the bribery at this place is Baliram Ambaji Mokal (Exh. 134). The witness comes from Benavali, a village in the vicinity of Borze. He canvassed in the last elections for the Congress candidates. According to him, on the 4th March when he was returning to his village from the village Kanc where he had gone for propaganda he happened to pass through Borze where a meeting convened by the Samiti candidates was then going on. It was attended by 50 to 60 villagers and in this meeting Shankar Arjun Mhatre, a Samiti worker, is alleged to have handed over Rs. 100 to one Raghushet announcing that this amount was received from the respondent in consideration of the votes from that village. This witness appears to be a Congressman for the last 7 or 8 years and he acted as polling agent of Shri A. T. Patil. Besides he is related to him. We must, therefore, accept his evidence with caution. Raghushet who is alleged to have received the amount, is examined by the respondent at Exh. 198. He denies to have received any money in this manner from Shankar Arjun.

There is no independent evidence on behalf of the petitioner to prove the allegation. In the circumstances, I am not satisfied that the evidence is sufficient to establish the allegation. The allegation of bribery, as I have already stated, is a very grave imputation and such an allegation being of a criminal nature must be strictly proved. The standard of proof that is required to bring home such a charge must therefore be the same as in criminal cases. The evidence should be such as would establish the fact beyond all reasonable doubt. Mr. Kotwal, the learned Advocate for the petitioner argued that in the very nature of things such an allegation is very difficult of proof since both the giver and taker of bribe are in league and can hardly be expected to give any admission. He, therefore, urged that so strict a test should not be applied. It must not be forgotten that just such an allegation is difficult to prove it is equally easy to make such an allegation and it is precisely for this reason that a very satisfactory proof is needed to bring home such a charge. The difficulty in the way of positive proof cannot be suffered to mitigate the intensity of proof that should be expected to establish it. Mr. Kotwal himself, realising the weakness of the evidence, wisely did not touch the evidence on this part of the petitioner's case, but left it to me to appreciate it by examining it myself. On careful consideration of the evidence it is my firm opinion that none of the allegations regarding bribery that are made against the respondent have been satisfactorily established and hence my finding on all the five parts of issue No. 4 is in the negative.

19. *Issue No. 5.*—In view of the negative finding on the above issue, it is really unnecessary to record a finding on this issue. On the evidence however it is obvious that so far as Hasuram Mumbaikar and Shankar Arjun Mhatre are concerned, there is no satisfactory evidence to show that they were in any way acting as the election agents of the respondent. It is conceded by the respondent, as already noted, that Raghunath Ramchandra Mhatre and Namdeo Changi Madhavi were his workers. But here again there is no proof that they were election agents of the respondent. I therefore record my negative finding on this issue.

20. *Issues Nos. 6 and 7.*—These issues relate to treating the villagers of Neral and round about villages and distributing articles such as banians, turbans, jaggery etc. to them. In connection with this allegation beyond the statement made by the petitioner, he has not led even a title of evidence. Petitioner has no personal knowledge about it. Mr. Kotwal, therefore, instead of pressing this issue fairly conceded that his client has failed to establish it. My findings on these two issues are therefore in the negative.

21. *Issue No. 8.*—Since issues Nos. 6 and 7 are not pressed, it is not necessary to record any finding on this issue. I will have occasion to consider this question about the agency of the first three persons namely Vasant Raut, Mahale and Arekar when I would deal with the issues regarding the allegation of disturbances at the meetings of Congress candidates.

22. *Issues Nos. 9, 11, 13, 15, 17 and 19.*—These issues relate to the allegations of disturbances created at different election meetings by the agents and workers of the respondent. The petitioner has alleged that such disturbances were created in as many as six different meetings and, therefore, separate issues have been framed regarding each of such meetings alleged to have been disturbed.

23. *Issue No. 9* refers to the allegation of the petitioner that respondent's agents such as Sarvashri Palande, Shankar More, Govind Sonu Katkari and others forced the Congress candidates to close a meeting taken by them at Khalapur on 2nd February 1957 by creating disturbance by shouting slogans etc. From the evidence of the Congress candidates M/s D. K. Kunte and A. T. Patil themselves examined at Exhs. 164 and 185 respectively it is seen that this meeting was taken by them in the afternoon some time between 12 noon to 2 P.M. at the courtyard of one Shri M. G. Pendse. They arrived at Khalapur for the meeting at about 12 noon and immediately within about a quarter of an hour the meeting started with an introductory speech by Shri A. T. Patil who was followed by Shri Walekar, the Congress candidate for the reserved seat to State Assembly from Pen Constituency. When Shri Kunte, the respondent's rival candidate, rose to address the meeting which was attended by about 175 to 200 residents of that place, according to the above witnesses one person by name Palande entered the courtyard where the meeting was going on and began to put question to Shri Kunte who was addressing the meeting. The questions were such as why Mr. Kunte had not tendered his resignation of speakership of the Bombay Legislative Assembly and why did he not raise a protest against the Police firings in Bombay during the Samyukta Maharashtra agitation. Shri Kunte told him that if he wanted to ask questions he might better give a list thereof so that it might be easy for him to reply. The questioner was not however satisfied by it and he created trouble in the meeting by shouting slogans and by styling Shri Kunte a traitor of Maharashtra. It is in evidence that some other persons such as G. S. Katkari, who in his turn was a Samiti candidate for a reserved seat from Pen Constituency, Balkrishna Patil and More were at this time standing outside the courtyard. Palande after going out joined them and all of them then again started shouting slogans such as "Samyukta Maharashtra with Bombay city must be formed", "Congressmen, the traitors of Maharashtra, quit", "Drive out murderous Congressmen," "Remember 106 martyrs and Vote for Samiti" in a loud and aggressive tone. The result of all this was

that the above Congress candidates had to close the meeting as they found it impossible to continue it because their speech was totally drowned in the stentorian voice of the slogans shouters. Before dispersing they started singing of national anthem when even the mischief mongers did not stop shouting slogans but persisted in their attempts to create disturbance. All this has been deposed to by the two Congress candidates M/s Kunte and Patil.

24. The respondent does not dispute the fact that such a meeting was in fact taken by these Congress candidates on this day at Khalapur. But he denies that any such disturbance was ever caused at that meeting by any of the persons named above. The presence of Palande, Raghunath Bhiva More and Balkrishna Patil who were admittedly respondent's workers, has been proved by the evidence of respondent's own witness Shri M. G. Pendase (Exh. 190) in whose courtyard the meeting was held. As for the presence of Shri G. S. Katkari also there need be no doubt. On this day he was at Khalapur, is clearly proved from the evidence of this very witness of the respondent. Shri Pendase says that shortly before the meeting started he did notice Shri Katkari passing by the road. Balkrishna Patil has been examined by the respondent at Exh. 191. But he denies that Shri Katkari was there. Mr. Katkari is not examined in this case. The petitioner's witnesses who are men of status have in a very straight forward manner given evidence and have testified to the presence of Shri Katkari among the persons who created the disturbance. He was known to them before. Shri Kunte is a double graduate of the University of Bombay and is a veteran Congressman since 1930. He was a member of the State Assembly from 1936 till recently. For a number of years he was a Member of the Maharashtra Pradesh Congress Committee and the All India Congress Committee. He was a member too of the Bombay University Senate as also of the Poona University Court. From 1947 to 1952 he was Parliamentary Secretary and in 1952 when he was again elected to the State Assembly from this District he was chosen as speaker which office he continued to hold till the end of October 1956. As for Shri A. T. Patil, although a comparatively junior Congressman, he too is a self-made man of very high calibre and integrity. He is an M.A., LL.M. of the Bombay University and has been working as a part-time Professor of Law in the Government Law College at Bombay, besides being a practising member of the Bombay Bar. For the first time he was returned to the State Assembly on Congress ticket, in 1952 from Pen Constituency. Both these witnesses are, in my opinion, men of integrity and honesty and, hence I feel no hesitation in accepting their evidence. I am convinced that respondents' witnesses have deliberately concealed the name of Shri G. S. Katkari, although he was in fact present to disturb the meeting. Thus the evidence fully establishes that at the time of this meeting the four persons, Palande, Balkrishna Patil, G. S. Katkari and More along with some unnamed followers were present. There is some confusion about the proper name of this More. Petitioner's evidence has disclosed that the proper name of this More is Shankar while the respondent's witnesses have given his name as Raghunath Bhiva More. It appears that although his real name is Raghunath he is also known by the nick name Shankar.

25. The question that then arises is was really any disturbance caused at this meeting. On that score also the petitioner's evidence, which I see no reason to disbelieve, clearly shows that disturbance was as a matter of fact created so much so that ultimately Shri Kunte and his companions had to close the meeting and disperse. The respondent has examined Pendase, the owner of the courtyard as well as Balkrishna Patil, both of whom say that no such disturbance was caused. They, however, admit that Shri Palande asked some questions to Shri Kunte but they say that it was not when the meeting was in progress, but after it was over. Balkrishna Patil admits to have shouted slogans. But according to him it was also after and not while the meeting was going on. On consideration of the above evidence led by the two sides I am satisfied that these two witnesses of the respondent have deliberately suppressed the fact that Palande asked questions and the slogans were also shouted when the meeting was in progress. Balkrishna Patil admits that he was standing on the road just outside the fencing of this courtyard for about 2½ hours. It is not known for what purpose this Samiti worker of the respondent was so standing for such a length of time, unless it be not for disturbing the meeting of the rival party. I am satisfied from evidence that the Congress candidates had to close this meeting because of the disturbance created by the above persons. My finding on issue No. 9, therefore, is that the above 4 persons along with some others did cause disturbance at this meeting as alleged by the petitioner.

26. Then, it is alleged that in the same manner a meeting taken by these very candidates soon after on this very afternoon at Chauk was also disturbed by these very persons. From the testimony of the petitioner's witnesses referred to above it appears that after the meeting at Khalapur was closed, they had some rest and then they proceeded to Chauk for another meeting which was already announced. They reached Chauk round about 3 P.M. The venue of the meeting was behind the local Police lines and it was approachable by a side road. Here it may be noted that Bombay-Poona road passes through this village, practically dividing it into two parts. At the junction of the above side road and the Bombay-Poona road from the evidence it appears that Palande, Raghunath Bhiva More, G. S. Katkari and Balkrishna Patil with some other local residents and urchins had posted themselves with black flags. On the arrival of the Congress candidates they greeted them with black flags and slogan shouting. Somehow or other through this crowd the Congress candidates could make their way to the meeting place, but they found not a single person present at the

place. Mr. Kunte with the help of a loudspeaker which he had fitted on his car, appealed to the slogan-shouters to stop shouting of slogans but they did not listen to the appeal. He however succeeded in attracting some of the villagers to the meeting place, but when they proceeded to the meeting place, they were prevented on their way by the above persons from proceeding further. These Samiti workers also showered stones on the car of Congress candidates. Seeing, therefore, that in such an atmosphere it was impossible for them to take any meeting, the Congress candidates abandoned the idea of addressing any meeting and retired to the residence of a local Congress worker by name Shri Deshmukh and from there they subsequently proceeded to Karjat for another meeting which was scheduled for that night.

27. The respondent's witness Balkishna Patil (Exh. 191), although admits that the Congress candidates had taken a meeting at Chauk in this afternoon and also his presence there at the time, he denies to have created any disturbance. He even admits that he and his colleagues shouted slogans, but according to him it was after the meeting was over. He denies that the meeting had to be closed because of any disturbance created by him and his companions. It is however not difficult to see that he is not a witness of truth. The witness had apparently no reason to follow the Congress candidates from Khalapur to Chauk. He has tried to give some explanation but it does not appear to be plausible. He says that a meeting of the workers of Samiti candidates was convened on that very evening at Chauk, and he had at the material time gone to that place for that purpose. If it was so, then it is not explained as to why he had been to the place of this meeting at all and why he shouted slogans after this meeting was over. I am, therefore, convinced that here again this witness is not giving out the truth. I fully believe the petitioner's witness in this respect and hold that because of the disturbance created by these persons, these Congress candidates were unable to take the meeting. My finding on issue No. 11 is, therefore, in the affirmative.

28. From Chowk the Congress candidates proceeded to Karjat where they reached by about 5-30 P.M. The meeting at Karjat was scheduled to take place on that night at about 9 P.M. So till then waited with the local Congress leader Shri Thosar in whose residence the office of the Congress Election Committee too was housed. At the appointed hour the meeting was taken, in the open ground in front of the local Post Office. Within a short time after Shri Kunte rose to address the audience according to the petitioner and his witnesses, Samiti workers like M/s Mahale, Arckar and others raised slogans such as "Nana Kunte Murdabad" (Down with Nana Kunte) and other slogans that have already been quoted above with reference to other two meetings. It seems that Shri Mahale was an old acquaintance of Shri Kunte. Both of them had worked together for several years. He, therefore, made an appeal to Shri Mahale that it was not becoming of a man like him to indulge in such hooliganism and that he might better restrain his followers. This appeal, however, fell on deaf ears. The slogan-shouters then divided themselves into two batches and from two front sides of the meeting they continued giving out slogans to disturb this meeting. It has even appeared in the evidence of the petitioner's witnesses that one of these trouble-shooters even went to the length of approaching the dias and from there shouted slogans. The name of this person was Mahadu Patil, as they later on came to know. In spite of this disturbance Shri Kunte as well as Shri A. T. Patil attempted to carry the meeting to the end. But it was rendered impossible for them to do so by the above slogan-shouters. They had therefore to close the meeting and retire to the residence of Shri Thosar. Even then it appears that they were followed by the slogan shouters when the former walked to the residence of Mr. Thosar and they continued to raise anti-Congress slogans till they were dispersed by the local Sub-Inspector of Police who later on arrived on the scene.

29. The above evidence of M/s Kunte and Patil is fully corroborated by an independent witness Shri D. K. Raje (Exh. 168). Raje is a retired Mamlatdar having retired in 1950 and since then he has settled at Karjat. He had attended this as well as the subsequent meeting held by the Congress candidates on the 10th in that very town. His evidence shows that this meeting of 2nd February 1957 was attended by about 300 to 350 people but had to be closed because of the disturbance created by Mahale and Arckar and their associates who were workers of Samiti, by shouting slogans.

30. On behalf of the respondent it has been suggested that the disturbance in this meeting was created by the person from the audience themselves because of certain irresponsible remarks made by Shri Kunte respecting Shri C. D. Deshmukh, the ex-Finance Minister in the Union Cabinet. It is stated that in this meeting Shri Kunte was pestered with questions such as why he had not resigned Speakership on the issue of Samyukta Maharashtra when Shri C. D. Deshmukh, who too was elected to Parliament from this District on Congress ticket had hazarded that step. In reply to this question Shri Kunte is said to have uttered some words which implied certain aspirations against Mr. Deshmukh. Shri has no doubt admitted in his cross-examination that such a question was in fact put to Kunte by Mahale, but he has denied that there was any disparagement in the reply given by Kunte. According to Shri Raje, the reply given by Shri Kunte was that resignation was given by Shri Deshmukh as Shri Deshmukh thought that step to be proper and wise, whereas in his

own opinion such a step was not a proper one and that was the reason why he did not tender his resignation. Shri Raje also admitted that for some days thereafter this speech of Shri Kunte had become a topic of discussion in some of the news papers published in this District. My attention was directed by Shri Daundkar, the learned Advocate for the respondent, to a news item appearing in the issue of Kolaba Samachar dated 13th February, 1957 produced by the petitioner at Exh. 117. In column No. 1 page 5 of this issue there appears a news item dated '3rd' received from Karjat under the heading "Running away of M/s Kunte and Patil from the Election meeting". In the body of this item it has been reported that in course of his speech Shri Kunte said "God has not given the monopoly of intelligence to Shri Chintamrao Deshmukh alone" and thereupon persons from the audience were exasperated and they created a row and ultimately the meeting had to be closed. We have, however, no means to verify whether this report published in this issue is itself true or false or contains exaggerations. We do not even know the source from which the editor received this news. It is very pertinent to note that not a single question about this, even indirectly, was put to Shri Kunte himself when he was in the box. The suggestion that is made, therefore, cannot be accepted. I therefore hold relying on the evidence led by the petitioner, that this meeting also was disturbed by the said persons. My finding on issue No. 13, therefore, is in the affirmative.

31. The meeting which is then alleged to have been disturbed is a similar propaganda meeting held at Karjat on 10th February, 1957 by the Congress party. Shri S. S. More, a prominent public worker and a Congressman from Maharashtra, addressed it. The meeting was held on the Ambareni grounds outside Karjat in the morning between 9 to 10 A.M. The account of this meeting and of the disturbance caused to it was given to the petitioner by Shri S. S. More himself and by some other Congress workers. The petitioner has no personal knowledge about it. The petitioner, it may be remembered, was the Chairman of the Congress Election Committee in this District and naturally he was from time to time kept informed by candidates themselves and other Congress workers about such developments. The petitioner relies on the direct testimony of his witness Dattatreya Krishna Raje (Exh. 168) referred to above. This witness who was present at the meeting of the 2nd, had also attended this meeting as well. On this day he arrived at the place of meeting about 5 to 10 minutes late. When he reached he found Shri S. S. More already addressing the meeting but was being obstructed by putting questions by Samiti workers, prominent among whom were Mahale and Gajanrao Mule. He was also derided by calling him traitor or treacherous. It appears that Shri S. S. More, who should be distinguished from Shankar alias Raghunath Bhiva More who had caused disturbance in the previous meetings at Khalapur and Chauk, was originally a Congressman. When the Peasants' and Workers' Party was formed in about 1948 he joined that party. But shortly before the last elections he left that party and again returned to the Congress fold. During the last elections, therefore, he being a very influential person among certain sections in Maharashtra, delivered speeches and addressed several meetings in different Constituencies on behalf of the Congress. It was on this account that he was looked down by the parties opposed to the Congress and especially by P. & W. Party in whose eyes he was a turn coat. Mahale has been admittedly a member and an active worker of the P. & W. Party to which the respondent owes allegiance. The significance of the epithet traitor or treacherous therefore employed with reference to Shri S. S. More would be intelligible in the light of these facts. It was because he left the P. & W. Party and went over to Congress that he was called a traitor.

32. Now, turning to the meeting itself, it appears that Shri More was being heckled and obstructed in his speech by the above persons. He exhorted these disturbance makers not to create such obstruction but allow him to complete his speech and if anybody had to put any questions to him, they might have given them to him in writing so that he might give his replies. Even, so, the above persons did not heed to it but persisted in creating disturbance so much so that ultimately the Police had to intervene and take them to one side. Even then, it is seen from Shri Raje's evidence that these persons did not stop the disturbance. The consequence was that Shri More had to close the meeting. The above evidence of Shri Raje practically goes unchallenged. I have already referred to the status and the position of this witness while dealing with his evidence in respect of the meeting of the night of the 2nd. I need not repeat the same. With regard to this subsequent meeting also, therefore, I feel no reservation to accept his evidence and relying on it I hold that this meeting too was disturbed by Mahale, Arekar, Mule and others. My finding on issue No. 15 is, therefore, in the affirmative.

33. On this day it appears that soon after the meeting at Karjat was over, another similar meeting was taken by the Congressmen at Sajgaon, a village about half a mile in the interior on Pen side from the point where Khopoli-Pen road meets the Bombay-Poona road and which is known as Sheel Phara. This meeting also was to be addressed by Shri S. S. More. It was already announced in advance. About this meeting the petitioner's evidence consists of the testimony of Shri A. T. Patil (Exh. 135) who was one of the candidates, and one Shri Pandurang Shivram Deshmukh (Exh. 179) who was present for the meeting. Shri Deshmukh is a native of the village Honad which is about half a mile away from Sajgaon. For the last several years, however, he has shifted for purposes of his business to Shahapur

in Thana District. On the 8th February last he had come to his native place where he stayed from 8th to 11th. During that period he learnt that a meeting was going to be addressed on this day at Sajgaon and so he had specially come for the meeting from Honad. From Shri A. T. Patil's evidence it appears that he went to Sajgaon from Pen some time by about 12 noon and when on his arrival at Sajgaon, he made enquiries with the local workers he was told that the meeting was announced at the Vithoba temple which is situate on the top of a hillock on the outskirts of the village. Shri Patil to receive Shri More, went in a car upto Sheel Phata. Within a short time Shri More accompanied by Shri Thosar, a Congress worker of Karjat, arrived. It seems by this time it was suspected that some pro-Samiti workers were bent upon creating disturbance in the meeting and so the venue of the meeting was changed and it was decided to hold it at the foot of the hillock by the side of Pen-Khopoli road. Shri A. T. Patil and the workers arranged a loudspeaker there and announced the change of the venue. Some of the persons who intended to attend the meeting had at first collected near the temple on the hillock but when this announcement was made on the loudspeaker those people started coming to the meeting place. Some Samiti workers were also there and they too came down. They were intercepted on the way by the Police, who it appears, were present in order to prevent happening of any untoward incident and to prevent breach of the peace. Among these Samiti workers, Balkrishna Patil, whose name has already figured with reference to other two meetings of the 2nd, one at Khalapur and the other at Chauk, was present. He has in his evidence admitted that fact. From the evidence of Shri A. T. Patil and Shri Deshmukh it appears that Balkrishna Patil and his associates prevented some persons who had originally collected near the temple and who on learning about the change of venue intended to proceed there. Not only this but when Shri S. S. More was delivering his speech they created disturbance by shouting slogans branding Congressmen as murderers. Shri More was here again styled as traitor of Maharashtra and was called 'Suryaji Pisal', a term which has almost become synonymous with a traitor. The students of Indian History and particularly that of Maharashtra very well know that Suryaji Pisal was a person who in the day of Marathas sided with their enemies, the Mogals, and kept them informed of all the secrets of the Marathas. In course of time therefore his name has become a symbol of treachery. Mr. More was perhaps called by this name because he had turned over to Congress from Peasants and Workers Party. Because of this disturbance the attention of the audience was diverted and distracted and ultimately the meeting had to be closed. The two witnesses who have deposed to the incident on behalf of the petitioner are men of status and have impressed me as witnesses of truth. I have already alluded to the status and the position in life of Shri A. T. Patil. Shri Deshmukh is a forest contractor doing business at Shahapur and from the manner in which he gave evidence he impressed me as a straight forward witness.

34. As against the evidence of these two witnesses, the evidence of Balkrishna Patil examined for the respondent does not appear to be truthful. He did not impress me as an honest witness. I distinctly remember that while in the box he displayed a tendency to suppress truth. It is surprising to see that this witness had an excuse to remain present at Sajgaon at the time of this meeting as well. It has already been stated that when he followed the Congress candidates from Khalapur to Chauk, he had an excuse that he was to attend a meeting on that evening at Chauk immediately after the Khalapur meeting. Even for his presence at Khalapur on the day, he was not without an excuse. He stated that he had been to Khalapur on the 2nd as he wanted to contact a friend of his by name Bhiva Govind Katkari who is stated to be a leader of the aborigines striving for the betterment of the conditions of the aborigines. Balkrishna Patil says that he wanted to see this friend of his in order to invite him to his own village and to know from him as to what he had done about the aborigines. It is however curious that a person who was so much anxious for the lot of the aborigines did not wait at the place of his friend but took time to wait for 24 hours on the road abutting the place where the Congress candidates took their meeting on that day. Similarly the reason why he was present on the 10th at Sajgaon is stated by him to be that there was some festival in the temple of Vithoba and so he had gone there to attend it. The witness states that on Magaha Sudha 10 every year a festival is held at this temple. But beyond his word there is no evidence for that. On the other hand, petitioner's witness Shri Deshmukh stated that as far as he knew, it was only on two important Ekadashis namely, Kartiki and Ashadhi, that such Bhajan parties were held. Whatever that may be, I doubt if Balkrishna Patil is such a devout Hindu who attends such religious festivals regularly. It is not difficult to see that it is simply an excuse put forth to umbrage the real purpose. There is an important admission, perhaps inadvertently given, by Balkrishna Patil that when he and his associates were proceeding downwards from the hill the Police on seeing them coming towards the meeting place obstructed them from going there. He further admits that those who were with him gave out slogans. He, however, says that this was done only after the meeting was over as he has stated with regard to the other two meetings. He further states in a reply to a question put to him by me that he pleaded with the Police that he as a free citizen had a right to go to the meeting place and why was it that he was being so prevented but the Police are said to have told him that he and his colleagues were so prevented because they happened to be Samiti workers. I am fully convinced that the evidence of this witness is a tissue of

lies and really speaking this witness and his colleagues did in fact disturb the meeting of the Congress candidates which had to be closed only because of the disturbance created by them. My finding on issue No. 17 is, therefore, in the affirmative.

35. This brings me to the last meeting in which disturbance was alleged to have been caused. It was a meeting held at Chauk at 3 to 3-30 P.M. on 3rd March, 1957 by Congress candidate Shri Kunte. It appears from Shri Kunte's evidence that he and Shri Thosar went to Chauk for this meeting between 3 to 3-30 P.M. The venue of meeting was the same place where the meeting of 2nd February was taken. When this Congress candidate and his colleagues went to the meeting place, Shri Kunte found some 20 to 25 residents of that place collected there for the meeting. On his way to the meeting place at the meeting point of the side lane and the main road according to Shri Kunte, Vasantrao Raut, present respondent's son who was himself a Samiti candidate for the Assembly seat, was seen standing with More and some other persons. It is stated that they were shouting slogans and were asking people not to attend this meeting of the Congress candidates. The slogans which they raised are stated to be of the very sort to which reference has already been made. Shri Kunte says that these persons were threatening the people not to attend the meeting of the Congress candidates. Shri Kunte on reaching the meeting place attempted to address but due to the shouting of slogans by these persons it was impossible for him to proceed with his speech. His voice was almost drowned in the shouts of the slogans with the result that his speech was not at all audible to the audience. He had, therefore, ultimately to close the meeting. The evidence of Shri Kunte has not been seriously challenged. The only material question which was asked in his cross-examination was that from the place of the meeting he was not able to identify the persons who were standing at the corner of the two roads. Shri Kunte frankly admitted that those persons were not identifiable to him from the place of the meeting. Shri Daundkar for the respondent, therefore, submitted that from the evidence of Shri Kunte it cannot be held that Shri Vasantrao Raut did create any such disturbance or even instigated any. The presence of Vasantrao Raut at this material time at Chauk is not denied. Shri Kunte has given evidence that when he turned round the corner while going towards the meeting place he found Vasantrao Raut among the persons shouting slogans. The same persons were there when the meeting was started. It is nowhere suggested that these persons had left the place when the meeting commenced. Obviously, therefore, since Shri Vasantrao Raut had associated with that mob, it is impossible to believe that he had not taken part in creating such disturbance by raising slogans which he had done a few minutes before. In this respect evidence of Vasantrao Raut who is the son of the respondent, was not led in this case. He was only examined in the petition that was filed against him personally and the other Assembly candidate Shri Katkari. Shri Katkari was also examined in that case but not in this case. By the joint Purshis filed in that petition the parties agreed that the evidence given in this case should be read in that case but not *vice versa*. Evidence from that petition, therefore, cannot legitimately be read in this case although the evidence adduced in this case must be read in that.

36. Even if it is read in this case, I do not think that it would in any way materially affect the question. In that case Vasantrao Raut in his deposition stated that on this day when the meeting was in progress he on his way to Tupgaon and Lohop stopped at Chowk when at a distance of 400 feet from the spot where his car had halted he noticed a meeting going on. He adds that when he stopped his car some people from that village collected around his car and reported that 10 to 12 teen-aged boys from the village had been detained by the Police and requested him to make enquiries about it. He, therefore, went to the Police Outpost where these children were detained and enquired with the constable as to the reason for which they were detained. The Police, it is stated, replied to him that the boys would be released no sooner the meeting that was in progress was over. He then returned to his car and assured the persons that the boys would be set at liberty soon and then proceeded to Tupagon. According to him as his car started the people behind him raised slogans. But I do not think that this was really so. Between the words of the two I am inclined to accept the word of Shri Kunte who is a man of standing and one who knows his responsibility. I cannot believe that he would stoop so low as to go to the length of falsely involving the son of the respondent in such manner. His evidence clearly shows that Vasantrao was present when he and his colleagues proceeded to the meeting place. I am, therefore satisfied from the evidence of Shri Kunte that not only Shri Vasantrao Raut was present at Chauk from the beginning of the meeting but he was one of the persons who created disturbance in the meeting that was addressed by Shri Kunte and because of this disturbance the meeting had to be closed. My finding on issue No. 19 is, therefore, in the affirmative.

37. *Issues Nos. 8, 10, 12, 14, 16, and 18.*—These issues call upon the petitioner to show if the persons who are alleged to have disturbed the meetings did so as agents, workers or persons acting in the interest of the respondents. The petitioner's allegation has been that these persons while committing the alleged practices acted either as agents, workers or at least in the interest of the respondent. It is not alleged that any of these persons were respondent's election agents. The only point to which, therefore, I have to confine

myself is whether the persons who are proved to have created disturbances were the agents, workers or persons acting in the interest of the respondent. In this connection the argument that is advanced on behalf of the petitioner is that the term 'agent' has in such cases to be given a wider sense and that it should not be taken in its ordinary restricted sense. As for this proposition of law propounded by Mr. Kotwal, I think, there is very little room to dispute its correctness. It is well-settled by a series of decisions of Election Tribunals, both in this country as also in England where democracy is working for number of centuries. Frazer in his Law of Parliamentary Elections, 3rd Edition, page 78 observes as regards agency in election law as follows:—

"With regard to election law the matter goes a great deal further because a number of persons are employed for the purpose of promoting an election who are not only authorised to do corrupt acts but who are expressly enjoined to abstain from doing so. Nevertheless, the law says that if a man chooses to allow a number of people to go about canvassing for him, to issue placards, to form a committee for his election, and to do things of the sort, he must to use colloquial expression, take the bad with the good. He cannot avail himself of these people's act for the purpose of promoting his election and then turn his back or sit quietly by, and let them corrupt the Constituency."

In *Messrs Lee & Briggs Vs. Mr. E. Green* (2 O'Malley and Hardcastle page 102) Justice Grove observes:

"By election law the doctrine of agency is carried further than in other cases. By the ordinary law of agency a person is not responsible for the acts of those whom he has not authorised, or even for acts done beyond the scope of the agent's authority. If a man gives another person authority to buy a horse for him he is responsible for the acts of that person in that transaction, if he gives him a general authority to act in his business for him acts which his agent is liable for all his agent's acts, but he is not responsible for the acts which his alleged agents choose to do on their own behalf. But if that construction of agency were put upon acts done at elections, it would be almost impossible to prevent corruption. Accordingly, a wider scope has been given to the term 'agency' in election matters, and a candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object."

In *T. C. Basappa Vs. T. Nagappa* (3 Election Law Reports page 197) the Tribunal held that the term 'agent' in election law was a wide significance. No authorisation or declaration in writing is necessary for the creation of agency in election matters and the fact of agency may be established by circumstances arising out of the general features of the case, the conduct and connection of the parties and the subsequent recognition of the acts of the supposed agent or at least absence of their disavowal. The doctrine of agency is carried by election law much farther than in ordinary civil or criminal cases. The election law is very hard and stringent as far as the creation of agency is concerned. Agency in election law is not the ordinary relationship of principal and agent but it is more akin to the relationship of master and servant. No authorisation or declaration in writing, therefore, would be necessary. Agency in election cases has at times to be inferred from mere circumstances and conduct of parties.

38. Turning now to the facts of the present case, it has been conceded by the respondent himself that Mahale, Balkrishna Patil, Palande and Raghunath Bhiva More were the members of his P. & W. Party and were also working for him in this election in Karjat and Khalapur Talukas. It is not, therefore, difficult to hold that these persons were the agents of the respondent in this election. According to the petitioner, the person who is called Raghunath Bhiva More by the respondent is the same who is named by the petitioner as Shankar More. It is suggested that it is his nick name. I think there is much truth in this. As for Vasant Raut and G. S. Katkari, they were the Samiti candidates from a part of this very Constituency. Vasant Raut is the son of the respondent himself and it appears from the admission of the respondent that while he was carrying on propaganda for himself he also canvassed for his son as also for G. S. Katkari who were Samiti candidates. It is true that he has stated that he had no idea whether they on their part did so in their own meetings. But there is reason to presume that they were also doing so. All of them were sponsored or backed by the same organisation. It is in evidence that there were even common posters issued and exhibited by these Samiti candidates. Such posters were circulated throughout the Constituency. Even though, therefore, the respondent pretends to have no knowledge whether they were or not canvassing for him, it is not difficult to see that this is a mere pretence. It can hardly be imagined that candidates of the same organisation put up in the same Constituency, although for different Legislatures, would have no liaison between them. I therefore feel no hesitation in holding

that they too were working and canvassing for the present respondent and with his full knowledge. Hence they must be held to be his agents. So far as Arekar is concerned, it is conceded that he is a member of the P. & W. Party of which the respondent admittedly was one of the founder member. It was formed in 1948 by some of the dissidents from the Congress. It is inconceivable that a member of his party was working without the knowledge and consent of the respondent. I am, therefore, satisfied that he too was agent of the respondent acting with the latter's consent.

39. As for Gajanan Mule there is nothing on record to show that he was a member of the respondent's party or at least that he is a man with pro-Samiti leanings. The respondent has denied that he was his worker or agent. I am not therefore satisfied that the petitioner has discharged the burden of proving that this Mule was respondent's agent. With regard to the remaining persons, namely Bhadsavale, Manohar Raut, Dahibalkar, Mahadu Patil and Appa Penduse, since the petitioner has not proved that they had taken any part in creating disturbances on any of the occasions alleged against them, the question whether they were agents of the respondent does not survive. My finding on these issues, therefore, is that Vasant Raut, Mahale, Palande, Arekar, Shankar *alias* Raghunath Bhiva More and Govind Sonu Katkari are only proved to be gents, workers as well as persons acting in the interests of the respondent during his election but not the rest.

40. *Issue No. 20.*—It is alleged by the petitioner in para 8 B (14) of Exh. 1 that the respondent, his agents and workers had published and affixed in almost all the villages and towns in his Constituency posters under the caption 'Behold this slaughter house' with Shri Morarji Desai and Shri S. K. Patil, two of the top-ranking leaders of the Congress Party depicted as flogging the public and below it the picture of Shri Jawaharlal Nehru depicted as dedicating on a platter a severed head of a human being to a goddess with a big knife lying by his side. It is stated that on such poster a special appeal was made to the electors to vote for the candidates of the Samiti. It is alleged that such posters were exhibited with the sole sinister motive of gaining an undue influence over the minds of electors so as to induce and force them to vote against the Congress and for the respondent. On behalf of petitioner one witness Baliram Gana Thakur is examined at Exh. 141 and he has supported him. The petitioner also produced a poster with his list at Exh. 8 But that poster does not contain anything to show either that it was issued by the respondent or by Samiti for the matter of that. No independent evidence was even led to show that it was issued by the respondent or by any other person with his consent or even knowledge. The mere fact that it contained an appeal to vote for Samiti candidates would not be enough to presume that it was issued by the respondent or any of his agents. The possibility that it might have been issued by some other staunch pro-Samiti cannot be ruled out. In that case it would not necessarily mean that such person issued it with respondent's knowledge or consent. An attempt was made to produce a copy of such a poster through witness Baliram Gana but as he was not summoned to produce any such document, nor was anywhere before this witness was put in the box disclosed that the witness was going to produce any such document, I have disallowed it. The witness stated that such a poster was exhibited by Shri G. S. Katkari while delivering a speech during his election campaign at Vadhab about 8 or 10 days before the polling day. I have already given my reasons for disbelieving this witness while discussing issue No. 4, regarding the allegation of bribery. The only other witness on this point is Krishnaji Gajanan Bhatkhande of Pali (Exh. 181). At the time of these elections, he states, he was in the service of one rice merchant and in connection with his duties as such servant he had to visit different places from Sudhagad Taluka. While on such tours he claims to have acquired knowledge about the posters having been exhibited by Samiti candidates. In the cross-examination however he admits that circulation of newspapers at Pali was the only fact which he deposed on his personal knowledge. By implication, therefore, it means that the knowledge about the exhibition of posters was not his personal knowledge but was derivative. There being, therefore, no cogent evidence to prove that such posters were in fact exhibited by the respondent or by any of his agents or with his consent, I have to find in the negative on this issue.

41. *Issue No. 21.*—Since the finding on the above issue No. 20 is in the negative, this issue does not survive.

42. *Issues Nos. 22 and 23.*—Both these issues contain almost similar allegations of undue influence and the evidence which is relied upon in support of the two being also common, it would be convenient to discuss both these issues together. The allegations in para 8 B (15) of the petition are that at almost all places in the Constituency writings such as "Vote for Congress is a vote for firing" and that "Remember and do not forget the 106 martyrs" "Vote for the Candidates of the Samiti" were written with a view to unduly influence the minds of the voters. These allegations are further amplified in para 11 of further particulars at Exh. 12 in which it has been stated that these appeals and writings were circulated with the issues of a daily paper Maratha published in Bombay, Konkan Krishival and Kolaba Samachar, the two weeklies published in this District at Penzari and Pen respectively and

Kesari, a tri-weekly paper published at Poona. The particular issues on which reliance is placed are referred to in these particulars. It is further stated that the pamphlet containing false statements regarding the personal character, conduct and candidature of the Congress candidates Shri Kunte and Shri A. T. Patil which formed the subject matter of para 8 E falls in this category of appeals as well.

43. The allegations in para 8 B (16) are that a continuous, systematic and an emotional appeal was made to the electors by the respondent and his agents and workers in the name of 105 persons who were killed in firings in Bombay and who were glorified as martyrs. It is contended that by such means the Congress organisation, its leaders and candidates were purposely lowered in the eyes of the electors and an anti-social atmosphere full of ill-feeling was created against the Congress Party as a whole. With regard to these allegations as well reliance is placed upon the same material which is relied upon in support of the allegations in para 8 B (15). Specific extracts from each of the several papers will have therefore to be examined to see whether they are really in any way objectionable.

44. The issues of Maratha which are relied upon are at Exhs. 107, 108, 109 and 110 and they are respectively of 6th February, 1957, 7th February, 1957 27th February, 1957 and 11th March, 1957. Firstly, exception is taken to the editorial in Exh. 107 heading of which is

मुक्ति लायपानि लडवा

(Fight for Bombay till the last drop of blood). The gravamen of this editorial is that the policy of the Congress is in favour of capitalism which occupies a key-position in the economic life of Bombay City whereas Samiti was opposed to capitalism and was waging a war for Bombay as part of that battle carried on by democratic methods and the path which the Samiti followed was the real path that led to socialism which was the social order envisaged by the Congress even. In the end, therefore, it appeals to the supporters of Samyukta Maharashtra Samiti to forget personal rivalries and petty private feuds among themselves and offer a united front against the Congress. In the end an appeal is made to all sections of Maharashtra to make their utmost by remembering Shivaji the Great and also by swearing by the name of "Mai Bhavani" the family goddess of Bhosales.

45. It is contended that this appeal made to the Maharashtraans is a systematic appeal on the ground of community. It is difficult to agree with this contention. The appeal is avowedly made to all sections of the residents of Maharashtra without any distinction of community, caste, class, race or creed. Then, it is contended that it contains a reference to national symbol namely the name of Shiv Chhatrapati. I will have occasion in the course of this judgment to discuss at some length whether reference to the name or use of the picture of Shri Shiv Chhatrapati is a reference or use of a national symbol when I would discuss this point at great length. Suffice it to state here that reference to the name of Chhatrapati Shivaji cannot be regarded as reference to any national symbol. The Legislature has by way of illustration mentioned national flag or the national emblem namely Ashok Chakra as national symbols in clause (8) of Section 123 which defines corrupt practices and under which a systematic appeal on the ground of race, community, religion, caste or appeal to religious or national symbols is termed a corrupt practice. In my opinion, national symbol, as the epithet national itself would show, must have nation-wide recognition and therefore this contention cannot be accepted.

46. Then what is relied upon from this issue is the material printed under the caption 'कांग्रेसला मदत म्हणजे गैलिकाराला मदत' "Support to Congress means assistance to firing" in Col. 2 on page 2. It is in the form of a letter under the signature of one Vasant Barve of Bombay, to the editor of Maratha. In this letter a complaint has been made that the office bearers of the Rashtriya Mill Mazdoor Sangh, a pro-Congress labour organisation, were collecting funds from the members and mill-workers by bringing pressure on them. The correspondent therefore appeals to the workers not to contribute to this fund bearing firmly in the mind that help to Congress candidate was tantamount to lending support to the firing. It is not explained as to how this amounts to objectionable appeal under clause (2).

47. Much is made of the picture of a chawl that is published at page 3 of this issue, under the caption 'Voters follow this example of the residents of this chawl'. It is stated to be a picture of B. D. D. Chawl No. 19 from Bombay. It bears a placard on which is written 'Congress took a toll of 105 heroes in the Samyukta Maharashtra movement. The volunteers of that Congress keep away from our chawl'. Below this picture it is stated that the residents of this chawl had given the above warning to Congressmen.

48. From column 3 on the last page of this issue two items are attacked as being such as fall under the corrupt practice. The first is under the heading 'Before the popular seat of justice' and below the Congressmen who are termed bulls have been called upon to give replies to three questions. These questions refer to the Police firings in Bombay and the apathy shown by the Maharashtra Ministers to it. Having carefully gone through this issue I do not think that there is anything which can be called a corrupt practice of undue influence or even an appeal much less on ground of caste, race, community or religion.

49. The next is a news item dated 5th purporting to be from Karjat. It gives a report of a meeting taken at Kolhare by M/s. Kunte and Patil, the two Congress candidates. It says that when these Congress candidates went for propaganda to Kolhare village and made an attempt to take a meeting, the enlightened voters from that place totally boycotted their meeting and one old villager told Shri Patil that none of the villagers would vote for Congress and that he had unnecessarily therefore taken the trouble of visiting that place. Again it is impossible to find anything in this piece which would amount to a corrupt practice within the meaning of clause (3) apart from the fact that there is nothing before me to hold that the incident which is referred to therein did in reality happen.

50. In the issue of 7th February, 1957 at Exh. 108 two items from page 1 are objected to. The first one is the news item purporting to be from Bombay. It gives an account of a meeting styled as a mammoth one said to have been addressed at Lalbaug by Acharya Atre. The heading of this item is महाराष्ट्र दारांवीं बटीक असतल्या कारस्तवे आता

वारा वाजवलेच पाहिजेत (Congress which is a minion of capitalists, must be routed.) The second item which is also a news items states that when certain female volunteers of Congress entered Bismilla Building of Dadar to distribute leaflets, the pro-Samyukta Maharashtra female residents of that place tore away to pieces those leaflets and threw them at their faces and drove them out. Similarly in the last column on page 2 a news item describing how Shri Nanasheb Kunte and A. T. Patil had to take to heels from a meeting at Karjat, is given. On page 3 is an account of what happened at a meeting of Congress candidates at Chawk. On the last page two questions have been posed to Congressmen again calling them bulls. The first one refers to alleged reference to Shivaji by Shri Morarji Desai, as a treacherous person before an American student by name Edward Dean. The second one blames the Maharashtrian Ministers, Speaker and members of the State Legislature for keeping a mum over it. Then the next item relied on is column No. 5 under the caption 'Vote for the pair of bullocks which was the election symbol of Congress was tantamount to giving support to a sinful act'. This again is an account of a meeting said to have been addressed by one Prabhakar More at Varali, Bombay. The Speaker is said to have said in the speech what has been stated in the heading.

51. The objected portions from the issue of Maratha at Exh. 110 are marked in red pencil. They are on the first three pages of it. On the first page in first two columns is printed a news item giving an account of how meeting of Congress candidates had ended in disorder at Kolhapur on 26th. In column 3 again a news item appears about an election meeting taken by Samyukta Maharashtra candidates at Santacruz. This news item states that Mrs. Lila Alvares in her speech had styled the Congress Government as "Bakasur Rakshas" (A gluttonous demon from Hindu mythology). On the same page in last two columns appears an account of a meeting addressed by Comrade B. T. Randive at Karad. On page 2 the portion which is objected to is the editorial under the heading "Taste the fruits of (your) deeds". It appears that this editorial is a reply to a complaint made by some of the pro-Congress papers from Maharashtra such as Lokamanya, Lokashakti and others against Maratha and other pro-Samiti papers and leaders. During the agitation for Samyukta Maharashtra it appears that some of the top-ranking Congress leaders were treated with contempt and were insulted by hoodlums so much so that at times footwears were even hurled at them. The above Congress papers insinuated that behind such incidents were the pro-Samiti papers and leaders to back these hoodlums. In this editorial the editor of Maratha has refuted this charge and has emphatically stated that Congressmen themselves were responsible for such incidents, and that the leaders of S. M. Samiti had no connection with them. He disowned all responsibility in that behalf. Lastly on page 4 is a news item from Karjat regarding a meeting taken by Shri Kunte. It states that Shri Kunte had to return without taking a meeting because he was confronted by some old women of the town by putting questions.

52. In the issue at Exh. 110 what is objected to is the prayer made in a banner line to the saints and heroes of Maharashtra to shower their blessings, presumably on the Samiti candidates. Below this banner line are printed photos of two saints Tukaram and Dnyaneshwar and in between the two saints photo of Chhatrapati Shivaji is placed. At the bottom of this page again is printed a line in broad type "Award capital punishment to Congress, the murderer of democracy." The editorial on page 2 bears the heading "Battle of Bombay". The sum and substance of this editorial is that the Congress leaders in the Government purposely turned down the demand for creation of Samyukta Maharashtra because these leaders had an animus against Maharashtrians. An appeal is, therefore, made to the voters not to vote for Congress and to win the battle of Bombay for Samyukta Maharashtra, presumably by returning Samiti candidates in the elections. On the third page are printed photographs of some of those who lost their lives during Police firings in Bombay during the agitation over Samyukta Maharashtra. The caption of this page is "मुंबईच्या मराठ्यांनी या राक्षसी कृतलीचा सूडण्या meaning "Marathas of Bombay, avenge this atrocious carnage." At the bottom again in broad letters it is written that the Congress ballot box was wet with the blood of martyrs. On the last page there is a picture

of a ballot box, presumably of a Congress candidate as it bears the Congress symbol of a pair of bullocks. It is supported on a palm of a demon and blood is shown dripping down. Below it are shown some people lying dead. The title of this picture is "Have you seen this Congress ballot box" and below it is stated that it is filled with blood of Marathas.

53. I now turn to the issues of Konkan Krishival which are relied on and which have been produced at Exhs. 111 to 118 and 120. In fact there is nothing in any of these issues which was pointed out to me except perhaps the news items from various places in this Constituency about the unsuccessful attempts made by the Congressmen to hold election meetings. Of course the accounts of these meetings which are given in these columns are unfavourable to the Congress party and it is reported therein that speakers were confronted with inconvenient questions by the residents of the various places and at times the meetings ended in confusion. Then, it was also pointed out that in the issue at Exh. 112 dated 17th February 1957 some 16 points have been made out against the Congress Party as such under the caption 'Congressmen, first make amends for this sin and then ask for votes.' In these points great emphasis is laid on the anti-Samyukta Maharashtra policy of the Congress and the Police firings in Bombay during the Samyukta Maharashtra agitation. It has also been alleged that corruption and waste was rampant under the Congress Government. It is not really necessary to go into details of these several points. The purpose of this article is to point out to the voters certain actions of the Congressmen and Congress Government which according to the editor or the writer were the mistakes and sins of commission or omission on the part of the Congressites who were in power.

54. Same is the case with the issues of Kolaba Samachar produced at Exhs. 115 to 119 that have been relied upon. From these issues also no particular portion was pointed out as being objectionable, except the pamphlet which Mr. Bhave is said to have issued and published separately as also as a supplement of the issue of Kolaba Samachar at Exh. 119 dated 27th February 1957. A copy of the pamphlet as it was separately issued is at Exh. 105 and as it was issued as a supplement to Kolaba Samachar is at Exh. 165. Mr. Bhave it appears though formerly a Congressman and an associate of the petitioner is now an apostate and has now turned a very staunch critic of that party. He is an enthusiastic supporter of the Samyukta Maharashtra cause and it appears from the issue of Kolaba Samachar dated 30th January 1957 that Shri Bhave was elected as the Vice-Chairman of the Election Committee appointed by the Samiti Branch at Pen where he resides. This pamphlet is an appeal issued by him to the voters as its heading in broad letters namely 'Beware voters shows. In the early part of the statement the firings resorted to by the Police in Bombay during Samyukta Maharashtra agitation have been referred to. In the latter part some statements respecting the Congress candidates for Parliament Shri Kunte and the candidate of the same party for the State Assembly Shri A. T. Patil are made which have also been attached in clause 8 E (1) of the petition as being an attack on the personal character and conduct of these two candidates. I will deal with this object at its proper place for which a separate issue has been framed. Here, I will confine myself only to the first half of this pamphlet in which reference to the firings have been made in order to make an appeal to the voters not to vote in favour of the Congress but in favour of Samiti candidates, and it is contended that it constitutes corrupt practice of undue influence.

55. So far as the firings are concerned, the pamphlet goes on to state that the Congress Leaders sacrificed the very principles in that they issued orders to shoot at sight on those who carried on a non-violent struggle meaning thereby the protagonists of Samyukta Maharashtra and took a heavy toll of 106 innocent lives by bullets. A suggestion is made that even the foreign bureaucracy did not even indulge in such atrocities in the 'Quit India' movement of 1942. It is also stated that the Congress Government turned down a request made from all quarters for an enquiry into these firings. A question is then posed to voters whether anybody would vote in favour of Congress in case one's own brother, son or husband had fallen a victim to these firings. Then follows an appeal to regard every person who had fallen a victim in the firings as a kith and kin and to refrain from voting for the Congress. After stating that the struggle for Samyukta Maharashtra would be continued till the end, a warning is addressed that if anybody would carry a false impression that none of the victims of the firings was in any way related to oneself, then the Congress Government which would in that event secure a recognition to their firings would in tomorrow's firings even murder one's sons and brothers. Here ends the first part of the pamphlet with which are mainly concerned in this issue.

56. The petitioner also relies in support of his allegation of undue influence on an issue Exh. 102 dated 24th February, 1957, of Kesari, a tri-weekly of Poona edited by Shri Jayantrao Tilak, the grand-son of Shri Lokamanya Tilak. The article to which an exception is taken, it appears, written by the editor himself under the caption 'Morarjishahiche Thaiman' meaning thereby atrocities under the Government headed by Shri Morarji Desai. It seems that this article was separately published in the form of a pamphlet with some three cartoons. The article as well as the cartoons refer to the Police firings. The article traces

the history of Samyukta Maharashtra agitation by referring to several incidents and landmarks in it, and tries to show that the Congress and its High Command turned down a legitimate demand for formation of a separate State of Samyukta Maharashtra with Bombay city as demanded by the Maharashtraans. Reference has also been made in this article to the Police firings in Bombay resorted to during this agitation and it is stated that the firings were unjustifiable and were purposely resorted to in order to blackmail the protagonists of Samyukta Maharashtra. The Government is blamed for not even conceding the demand for an impartial enquiry into the firings.

57. The petitioner's contention is that the articles and the matter written and published in all these papers during the election campaign and particularly in the issues referred to were most objectionable and constituted a corrupt practice of undue influence inasmuch as they aimed at creating illfeeling and animosity towards the Congress party in general and its candidates in particular and was also calculated to create fright and terror in the minds of the voters and thereby to force them to cast their votes in favour of Samiti candidates.

58. A perusal of all the several issues of different papers referred to above would no doubt show that they in very strong language have criticised the Congress party, its leaders and candidates for the rejection of the demand of Samyukta Maharashtra and of that for enquiry into the Police firings. They have made a capital of the firings which according to them were totally unjustified. It is even suggested that a vote for such a party under whose Government such unjustifiable firings were resorted to by the Police was virtually a vote in favour of such atrocities. In some of these articles the victims of the firings have been even glorified as martyrs. Mr. Kotwal for the petitioner contended that to glorify such victims as martyrs was really perversion of truth. According to him usually this epithet 'martyr' is applied to a person who lays down his life for the vindication of some righteous principles or right and in using this epithet according to Mr. Kotwal, the clear intention of the writers of these articles was to paint before the public these things in a very perverted form and to highten the enormity of these supposed atrocities said to have been perpetrated by Congressmen. It is difficult to agree with this submission of Mr. Kotwal. In a democracy it is indeed a right of every party to be critical of the policies and doings of the rival party or parties and it is perfectly legitimate for them to influence the voters in this manner provided they do not transgress the legitimate bounds of criticism. If the criticism amounts to defamation, the person concerned can have recourse to the remedies provided by ordinary law. It would indeed be a negation of democracy to deny this very valuable right which is freely conceded to the subjects in a democratic form of Government. To stifle such criticism would in my opinion be the denial of democracy and it is not difficult to imagine what the consequences thereof would be. If such criticism is not permitted it would not be long before the democracy pervers and degenerates into dictatorship.

59. Mr. Kotwal's contention is that these writings are an attempt to interfere with the freedom of thinking of the electors and that in that view it is an interference or attempt to interfere with an electoral right of the voters. It is contended that by giving undue prominence to firings and levelling such nasty criticism against Congressmen, the voters were as though hypnotised into refusing to think independently and to blindly follow the views advocated in these papers. This, it is submitted, is clearly an interference with the free exercise of the electoral right of a voter. It is stated that by saying that if you vote for the Congress it would mean a vote for firing, would perhaps lead to repetition of such firings in future on the very sons and daughters of the voters, the voters are indirectly influenced in not exercising their free choice in the matter of casting their votes. But I believe such method of influencing by persuasion is considered to be the most legitimate method of winning over the voters under a true democracy. As I have already stated, it is the right of a party in a democracy to be critical of rival parties. The form or the exact words in which that criticism should be levelled depends on each individual. One person would use very tender words, another may use very harsh and strong language. But as long as such criticism does not transgress the bounds laid down by law, it is difficult to hold that it is in any way a taboo. It is true that section 123(2) which defines undue influence is worded in most general terms so as to include even an indirect interference or an attempt to interfere on the part of a candidate or his agent or any other person with free exercise of an electoral right. But there should be some connection between the two. Electoral right has been defined in section 79(d) as "the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election." Interference with the free exercise of such a right no doubt amounts to undue influence. Interference, in my opinion, presupposes an element of compulsion. To interfere with an exercise of electoral right would mean to compel or force an elector to act in a manner in the matter of exercise of his electoral right either as a candidate or as a voter, in which he would not act if left to himself and in the absence of such a compulsion or force, mere appeals, however strong in language cannot be termed as undue influence. In other words, there should be some evidence to show that had this influence not been there, the voters could have acted in a different manner. There is nothing to show that only because of all these writings the voters were compelled to vote for the Samiti candidates. It is in evidence that margin between the number of votes polled by

the respondent and that by his rival Congress candidate Shri Kunte is of many thousands. Having given my careful consideration to the entire argument advanced in this behalf, I am unable to accept the argument that such writings constituted interference with free exercise of the electoral right of the voters and so in my opinion although it has been proved that such writings were published they would not amount to a corrupt practice under the Act. Hence purely as a question of fact I would hold on these issues that such writings and appeals were made but not with a view to unduly influence the minds of the voters.

60. *Issue No. 24.*—This issue refers to the question whether Mr. Bhave acted as an agent of the respondent in publishing the above pamphlet Exh. 165. I will have an occasion to refer presently to this question when I would go to issue No. 29. Therefore, it is needless to record a separate finding on this issue at this stage.

61. *Issue No. 25.*—This issue was framed in view of the allegations contained in para 8C(1) of the original petition Exh. 1. In this paragraph it is alleged that for the furtherance of his election prospects the respondent, his agents and other persons made a systematic appeal that the Congress is an enemy of the whole community of Maharashtra and the Congress candidates are the assassins of Maharashtra and Maharsahtrians as a community and therefore, a vote for them is a vote against Maharashtra and Maharsahtrian community and a vote for the respondent is a vote for Maharashtra and Maharsahtrian community. In para 12 of his further particulars Exh. 12 the petitioner purported to amplify these allegations by simply stating that as regards this paragraph 8C (1) the petitioner's say would be evident by reading, by way of specimen, the issues of the newspapers mentioned above namely those of Maratha, Konkan Krishnival and Kolaba Samachar. Since, however, the petitioner never specifically alleged that the editors or publishers of these papers were the agents of the respondent, he had to be restricted to the acts, if any committed by the respondent personally. It is conceded that no appeal made by the respondent personally in para 8C(1) has been proved on the record. There is not a single piece of evidence which would show that the respondent at any time during his election campaign made such an appeal to his electors with a view to further his election prospects. In one of the issues of Maratha, that is the one at Exh. 110 dated 11th March, 1957, to which reference has just now been made while dealing with issues Nos. 22 and 23, there is an appeal made to the Maharsahtrians as a community. Yet, there is nothing to show that Shri Atre, the editor of that paper acted as respondent's agent in any manner. All that was suggested was that since the respondent was admittedly one of the prominent leaders in the Samyukta Maharashtra agitation along with Shri Atre, all that Shri Atre did must be presumed to be for the benefit of the respondent as well, and since the respondent reaped the benefit of the publications made by Shri Atre, he must also bear the responsibility for them. But in the first place, there is not an iota of evidence to show that the respondent had any knowledge about what Mr. Atre was publishing or that he had ever given his consent either express or implied, for publishing the same. Then, we do not know whether that particular issue which contained such an appeal was circulated at all in the respondent's Constituency. This appeal which is objected to is contained in the issue of 11th March, 1957, which was the last day of polling in Bombay State. It is in evidence that Shri Atre was himself a candidate from Bombay city where his paper was printed and published. It is, therefore, not difficult to see that he made those publications in his own interests and for the furtherance of his own election prospects rather than for anybody else. I am, therefore, unable to agree with the petitioner's Advocate in this respect. No particular appeal from any other paper was pointed out. My finding on this issue, therefore, would be in the negative.

62. *Issue No. 26.*—That brings me to the next allegation contained in para 8 B (1) of petition which forms the subject matter of this issue. In this paragraphs the petitioner has given an instance of an appeal to the national symbol which under sec. 123(3) amounts to a corrupt practice. It is alleged that the respondent and his workers exhibited bustsize pictures of Shri Chhatrapati Shivaji Maharaj on placards containing an appeal to vote for Samiti candidates. It is also alleged that they solicited votes in the name of Chhatrapati Shivaji Maharaj. That is how it is alleged that use of an appeal to a national symbol was made. On behalf of the respondent it is denied that any such use of or appeal to was ever made by him or any of his workers and it is also contended that such a reference to the picture and name of Shivaji would not amount to a use of or an appeal to a national symbol. In other words, it is stated that bustsize picture of Chhatrapati Shivaji or his name is not a national symbol. Therefore, I will have to consider first of all whether it has been proved that any use of or appeal to Chhatrapati Shivaji's name or picture was ever made by the respondent himself. It is not necessary to see whether any of the workers of the respondent did so because no name of any such worker of the respondent was ever disclosed either in the original petition or the further particulars filed by the petitioner.

73. The only witness of the petitioner who speak to this corrupt practice are Baliram Ambaji Mokal (Exh. 184), Baliram Gana Thakur (Exh. 141) and Ramdas Kathari Patil (Exh. 180). Baliram Ambaji says that on the 4th March when he was returning from Kane where he had gone for Congress propoganda he and his colleagues passed through Borse

where a meeting in support of Samiti candidates was in progress. According to this witness, in that meeting one Shanker Arjun exhorted the audience to vote for Samiti candidates by appealing to the name of Chhatrapati Shivaji. Similarly Baliram Gana professes to testify to an incident alleged to have happened at Vadkhav at the meeting addressed by Govind Sonu Katkari, a Samiti candidate in Pen Constituency. It is stated by this witness that in this meeting Mr. Katkari exhibited a poster depicting Chhatrapati Shivaji with the following headline 'You valient Marathas, remember Shiv Chhatrapati and vote for Samiti candidates'. It is stated that below this picture were written the names of Samiti candidates including the respondent. In the same way Ramdas Kathari Patil speaks about a board with a picture of Shiv Chhatrapati and appeal as stated above having been exhibited by Samiti workers in his village Kalwe. According to this witness, this board was affixed on the wall of a Maruti temple in the village. He is, however, not able to say by whom it was so exhibited. Now, from this evidence it is apparent that none of these witnesses referred to any act of exhibiting Shivaji's picture or of appeal made by the respondent personally. On this evidence, therefore, it is difficult to answer this issue in the affirmative. It was contended on behalf of the petitioner that Shri. Katkari being a Samiti candidate should be regarded as the agent of the respondent and so his acts would be binding on the respondent. It is difficult to accept such a contention, especially when no such allegation was ever made, even remotely, in the petition. Moreover, I have already given my reasons for disbelieving these witnesses when I have discussed the issue in respect of allegation of bribery. I am not, therefore, satisfied about the truth of the statements made by these witnesses in respect of this allegation as well. My finding on this issue is, therefore, in the negative.

**63. Issue No. 27.**—This issue covers the respondent's contention that a reference to Shiva Chhatrapati's name or picture would not amount to use of or appeal to a national symbol because Shiv Chhatrapati is not a national symbol. In view of my finding that such use or appeal by the respondent has not been proved, in fact no finding is necessary on this issue. However, I think there is considerable force in the contention made by the respondent that Shiva Chhatrapati is not a national symbol. Clause (3) of sec. 123 prohibits an appeal to national symbols and by way of illustration of national symbols it mentions national flag or the national emblem. It is true that this will not be the exhaustive connotation of the expression national symbol. Yet, to me it appears that a picture of national hero like Shivaji who played an important role in shaping the destinies of this country in the past, cannot by any stretch of imagination be called a national symbol. In my view, national symbol is not synonymous with national hero. So even if any finding be needed, my finding on this issue would be in the negative.

**64. Issue No. 28.**—The next corrupt practice alleged against the respondent is that Shri Bhave as the agent of the respondent made and published statements of facts which were false and which he believed to be false and did not believe to be true, in respect of character, conduct and candidature of the Congress candidates M/s D. K. Kunte and A. T. Patil. In support of this allegation a pamphlet said to have been issued and published by Shri. R. G. Bhave of Pen is produced at Exh. 105. This pamphlet entitled 'Voters beware' (मतदारगणने जागे रहा) appears to have been issued by one Ramkrishna Govind Bhave, B. Ag., on behalf

of the Samyukta Maharashtra Samiti Branch at Pen. The first part of the pamphlet refers to the meek submision of the Maharashtrian Congress leaders to the Congress High Command's decision to reject demand for Samyukta Maharashtra and then to the Police firings in Bombay and states that 160 innocent persons lost their lives in those firings. In the latter part it has been stated addressing the voters from Pen Taluka that Nana Kunte and Ambaji Patil, obviously the two Congress candidates named above, instead of performing the christianing of the 'Pen Taluka Sahakari Veej Society' presided over its obsequies, and they also toyed with and made a fiasco of the Kharepat embankment scheme. So, an appeal is made to the voters that they should vote for Samiti candidates in the forthcoming elections.

65. Now, so far as the fact that Shri Bhave published this pamphlet is concerned, in my opinion, it is established beyond any manner of doubt. This pamphlet appears to have been printed in the Madhav Press, Poona 2. The petitioner has examined Purushottam Vithal Patwardhan, the proprietor of this press. He has testified to the effect that at the instance of Shri R. G. Bhave of Pen, whom he knew very well, he printed 2000 copies of this pamphlet and the one at Exh. 105 is one of them. It is stated by him that on 21st February 1957, he had received a letter from Shri Bhave instructing him to print these 2000 copies of the manuscript pamphlet sent by him. This original letter is also produced by him at Exh. 106 and he also identified the handwriting on this letter and the signature below it as that of Shri R. G. Bhave of Pen. Then, the witness adds that he accordingly printed 2000 copies thereof and despatched them to Shri Bhave of Pen. Bhave paid him Rs. 17/- as the printing charges. These allegations have not at all been challenged. Thus, it is positively proved that this pamphlet Exh. 105 printed and issued by Shri Bhave of Pen.

66. Then, we have in evidence that Shri Bhave had sent 1200 of these 2000 copies to Shri V. V. Mandlik, the editor of Kolaba Samachar, a weekly published at Pen with a request to circulate the same along with the issue of his paper dated 27-2-1957. The editor accordingly circulated them as supplement. But as the postal rules prevented him from circulating it as it was, he printed some matter on the back side of these copies before he so circulated them. This pamphlet issued in the form of a supplement is again produced at Exh. 165. Thus, it is sufficiently proved that the pamphlet was issued by Shri Bhave and the same was circulated at his instance.

67. It is also obvious that this pamphlet contains two references to M/s Kunte and A. T. Patil. The first of these statements, as stated, is that these two persons instead of celebrating the christening of Pen, Taluka Sahakari Veej Society, performed its obsequial ceremonies relating to 12th and 13th day. It is in evidence that a co-operative society was formed in 1947 at Pen with a view to start electrical power house at Pen, to cater to the needs of the residents of that town. The society collected a capital of Rs. 6000/- to 7000/-, purchased a site but ultimately the project could not materialise as the State Government required the Society to make a deposit of Rs. 3000/- before a requisite licence could be issued. As the Society was not in a position to fulfil this condition, the society was ultimately taken into liquidation by a resolution of the Board of Directors passed on 22nd July 1951 as appears from the resolution Exh. 138, passed at the meeting of Directors. Accordingly liquidation proceedings were started and in the beginning the District Co-operative Officer, Alibag functioned as the liquidator on the orders of the Deputy Registrar, Co-operative Societies. Subsequently from 16th October 1953 Shri A. T. Patil was appointed as the liquidator and the liquidation proceedings, it appears are still pending. The petitioner as well as Shri Bhave both were among the promoters and the Directors of this Society. One Shri Shahane was the Chairman of the Board of Directors. He originally was a resident of Pen but it seems that he ordinarily resides at Bombay. When the Government in the P.W.D. demanded as deposit of Rs. 30000/- and when it was realised that it was beyond the means of the Society to fulfil this conditions, Shri Shahane as well as Shri Nene (the petitioner) approached Mr. Kunte, who was then, it seems, the Parliamentary Secretary to one of the State Ministers, probably the Minister for Home and Revenue, with a view to see if this condition would be relaxed. Mr. Kunte directed them to the Secretary, P.W.D. to whom he also phoned and informed that Shri Nene would be meeting him in this connection. Beyond this, Mr. Kunte did not take any part in the affairs of this Society, and he was in no other manner connected with it either. It does not appear that Mr. Patil too was in any way concerned with this Society before he came to be appointed as its liquidator. It is, therefore, obvious that there is no substance in the allegations contained in Mr. Bhave's pamphlet Exhs. 105 and 165 that these two persons instead of celebrating christening ( बारसे ) presided over the obsequial ceremonies thereof. It, therefore, goes without saying that this statement has not even a semblance of truth and can, therefore, be easily characterised as a false one. The respondent even was frank enough to concede that the statement is false. It is in evidence that Shri Bhave was intimately connected with this Society, he being a member of the Board of Directors. Presumably, therefore, he knew the facts connected with its liquidation. In fact from the list of persons (Exh. 139) who were present for the meeting of 22-7-1951 in which the decision to wind up the affairs of the Society was taken, Shri Bhave was one of the persons present. There can, therefore, be no doubt that this statement is false to the knowledge of Shri. Bhave.

68. Similarly the other statement to which objection is taken is that these two persons namely Shri Kunte and Shri Patil toyed with and made a fiasco of the Kharepat embankment scheme. The exact sentence which appears in Marathi is "खाठेयाट बंदिस्लोया खेडखंजेबा कला." In order to appreciate the argument of the petitioner some more facts will have to be stated. In about 1948 the State Government passed a legislation known as the Bombay Khar Lands Act of 1948 with a view mainly to provide for the protection and improvement of Khar lands and reclamation of tidal lands in this State by the construction or maintenance of embankments. At the time this legislation was carried through in the Legislature, Mr. Kunte was the member of the Legislature and has admitted that he had played an important part in piloting this bill. Thereafter when the Act came into force he was also appointed by the Government as the Chairman of the Khar Lands Development Scheme upto 1952 or so. Shri A. T. Patil was also appointed as its member, but subsequent to 1952. At that time Shri Kunte was not its Chairman. Under this scheme it appears that construction of dykes was contemplated in order to bring under cultivation lands which are submerged under sea water in the tract known as Kharepat in this District. And there is considerable part of Pen Taluka which is comprised of such lands. Under the Act and the Rules it appears that the expenses of construction and maintenance of such dykes were to be borne by the Government, the land holder and the tenant in the proportion of 40:40:20 and where there is no tenant on the land, then 40:60 by the Government and the land holder.

69. It was suggested in the cross-examination of the petitioner and his witnesses M/s Kunte and Patil and others that there was a good deal of dissatisfaction over this impost on the land holders and the tillers of the soil because the burden that was placed upon them was considered to be too much for them to bear. But there is nothing on record to show how or in what manner these two persons were responsible for making a fiasco of the whole

scheme or how they bungled with it. It was suggested that Shri A. T. Patil as member of the Legislature from this part as also as the member of the Board failed to represent this view point of a section of the people before the Board. Wherever it may be, it is impossible to hold that these persons did what is alleged against them. In fact what the author of this pamphlet meant by saying this is not even clear. So, it is not difficult to hold that this statement as well is also false and contains not a grain of truth.

70. However, the real point is whether these statements are a reflection on the personal character or conduct of the candidates concerned. All that is suggested in these statements is, as I have already pointed out above, that the two persons named in it were responsible for the winding up of the Society and had also bungled the whole scheme of dykes. But it is difficult to see in it any insinuation, against the personal character of these persons. It is nowhere suggested that they were in any manner entrusted with any funds in connection with these two schemes and that they either misappropriated them or wasted it in any manner and thereby brought about their ruin. I at least am unable to see any reflection in these statements on the personal character or conduct of these two persons. It is not contended that it in any way assails the candidature of the candidates. At the most what these statements convey is that the two persons were not able to carry these schemes to success and they proved themselves insufficient for the task. For these reasons, although it has been proved that the pamphlet was issued and published by and at the instance of Shri R. G. Bhave of Pen, I am unable to hold that it contains statements which are in relation to the personal character, conduct or candidature of these two candidates. The finding on issue No. 28 will have, therefore, to be returned in the negative.

71. *Issues Nos. 24 and 29.*—The next question which is the subject matter of these issues is whether Shri Bhave in issuing such a pamphlet acted as an agent or worker of the respondent. As my finding on the main part of the allegations of the petitioner is against him, it is indeed unnecessary to record a finding on these issues. Yet, in order to make this judgment complete in itself, I proceed to examine the evidence and record a finding. It is in evidence that Shri Bhave was an active member of the Samyukta Maharashtra Samiti Branch at Pen. Over and above the fact that as the pamphlet itself shows, it was issued by him on behalf of this branch of the Samiti, the editor of Kolaba Samachar Shri Mandlik in his evidence at Exh. 147 states that Shri Bhave was connected with this Branch of the Samiti, although he denies any knowledge as to what exact position he occupied in that body. In the issue of Kolaba Samachar published by him on 30-1-1957, however, there is a news item to which my attention has been invited by the petitioner. This item in column No. 1 of page 5 of this issue which is at Exh. 116, after mentioning that Shri Vasantrao Raut, the son of the respondent and who was the candidate for the Assembly from this Constituency had launched his election campaign with full vigour, says that on 24-1-1957 a meeting of the pro-Samyukta Maharashtra workers was convened at Pen and propaganda committees were appointed for each ward. At the meeting of protagonists of Samyukta Maharashtra from Pen town convened on the night of 27-1-1957 at the house of Baburao Bhagwat and under his Presidentship, it says, Shri. R. G. Bhave was elected as the vice-chairman of the propaganda committee. Mr. Mandlik, the editor of the paper confirms that he invariably publishes in his columns such matter as is sent to him from reliable sources and after ascertaining their genuineness and truth. So far as this news item is concerned, there is no doubt as to its genuineness. Thus, in my opinion, there is ample evidence on record to show that Shri. Bhave was a prominent member of the Samyukta Maharashtra Samiti Branch at Pen in this Constituency, and he was assiduously working and canvassing for the Samiti candidates, one of whom was the respondent.

72. The respondent himself, as is evident from his own deposition, is a staunch supporter of the cause of Samyukta Maharashtra. It was he who presided over the meeting of all party leaders convened at Dadar in September 1953. He espoused this cause most ardently so much so that he even courted imprisonment. Against this background it is inconceivable that there was no liaison between the Parliamentary candidate sponsored by Samiti from this Constituency and Shri Bhave who was equally an ardent and enthusiastic worker of the Samiti. I have already discussed above while dealing with similar question relating to the agency of persons who had created disturbances in the meetings convened by Congress candidates, that under such circumstances agency has to be inferred. For the same reason, I do not feel any hesitation in holding that Shri Bhave was the agent of the respondent and was canvassing for him with his knowledge. My finding on these two issues would, therefore, be in the affirmative.

73. *Issue No. 30.*—So far as this issue is concerned, Mr. Kotwal, the learned counsel for the petitioner candidly admitted that although there is evidence to show that Shri G. S. Katkari who himself was a Samiti candidate for the State Assembly was also canvassing for the respondent with the latter's knowledge, it is difficult for him to prove that he was a person in service of Government within the meaning of sub-clause (g) of sec. 123(7) of the Representation of the People Act. There is no controversy that originally Shri Katkari was a primary teacher under the District School Board and was posted as an Assistant teacher at Roha. Before he filed his nomination paper he tendered the resignation of his post and on the advice of the Administrative Officer of the District School Board even relinquished charge of his office. Mr. Kotwal conceded that apart from the question whe-

ther the acceptance of resignation was complete before filing of the nomination papers and whether it was effective before that date, he was unable to show that a primary teacher under the District School Board belonged to a class of persons in the service of Government as were prescribed under the rules framed under the Representation of the People Act. This and the following issue, therefore, call for no finding as the contentions with regard to them are given up so far as the present petition is concerned.

74. *Issue No. 3.*—At this stage it would be convenient to deal with question which has been raised by the respondent namely that the several allegations contained in paras 8B (3) to (7), (10), (14) to (16), 8C (1), 8D (1), 8E (1)(a) and (b) and 8G (2) do not amount to corrupt practices as defined in sec. 123 of the Act. Paras 8B (3) to (7) and (10) relate to the disturbances caused in the meetings of the Congress candidates at different places to which I have already referred above. On facts I have found on these points in favour of the petitioner and I have also found that some of these persons who caused disturbances were acting as agents of the respondent in this election. It has, therefore, become necessary to determine whether such disturbances would amount to corrupt practice under the Act because in that case further question will have to be considered as to whether the election of the respondent will have to be avoided on that count.

75. Under sec. 123 of the Representation of the People Act different corrupt practices have been defined. On behalf of the petition it is urged that such creation of disturbances in the meetings of rival candidates amounts to the corrupt practice of undue influence which is defined in clause (2) of this section. In this clause corrupt practice is defined as follows:—

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right;

Provided that :—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

Generally speaking, therefore, according to this definition undue influence is any interference or an attempt to interfere, whether directly or indirectly, on the part of the candidate or his agent or any other person with the free exercise of any electoral right. The electoral right is also defined by the Act in sec. 79 (d) as the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. It is, therefore, clear that interference or an attempt to interfere must be with the right of a person to stand or not to stand as or to withdraw from being a candidate. It may also be interference or an attempt to interfere with the right of a person to vote or refrain from voting at an election. Mr. Kotwal contends that it was an inherent right of the Congress candidates concerned in this case to stand for the election which in itself carried with it a right to carry on election propaganda for themselves such as by means of addressing public meetings and in other legitimate modes. It is further contended that by so creating disturbances the object of those who created such disturbances was to force the rival Congress candidate of the respondent to withdraw from being a candidate. It was not presented by him that such disturbances would in any way amount to an interference with the right of an elector to vote or refrain from voting at an election. All that Mr. Kotwal contended was that such disturbances constituted interference with the right of the candidate, in that it prevented him from carrying on his propaganda.

76. I find it difficult to agree with this contention. It is true that the definition of undue influence has been framed by the Legislature in very widest possible terms so as to include direct or indirect interference or even attempt to interfere with the electoral right of a voter or a candidate. Yet, it cannot be denied that however general the language may be, there must be some connection between the act and the alleged result. In other words, the act must be such as is in an indirect manner at least capable of influencing the discretion of a voter or a candidate in the exercise of his electoral right. Every adult citizen of India under the Constitution has a right to vote or to stand as a candidate in the election according to his own choice. In the exercise of this right he is given complete freedom. He may stand as a candidate or may not. If he stands later on he may even withdraw his candidature. Similarly a voter may poll or may not poll his vote and if he chooses to vote he may cast it

in favour of any candidate he likes. Nobody can interfere with the discretion that is given to him in this matter. Of course the method of persuasion by legitimate means is not ruled out. Yet, it is difficult to see how a disturbance created in the meeting taken by a candidate can be held to be undue influence within the meaning of this clause. It cannot necessarily be said, as is urged on behalf of the petitioner, that the object of the disturbance makers was to compel the candidates to withdraw from their candidature. Equally it cannot be said that a right of a candidate to stand for the election carried with it a right to take public meetings. It may be one of the methods of canvassing and educating the voters. Having given my anxious consideration to this question, I find it difficult to agree with the contention advanced on behalf of the petitioner that such disturbance in a meeting would be a corrupt practice of undue influence within the meaning of clause (2) of sec. 123 of the Act.

77. Moreover, it would be pertinent in this respect to note that such a disturbance at election meeting is made an independent offence under sec. 127 of the Act and from clause (3) of that section it would appear that whenever any person causes such disturbance any Police Officer is invested with powers to require at the request of the Chairman of the meeting the person to declare his name and address to him and if he refuses or fails to do so or gives a false name or address, the Police Officer is entitled to arrest him without warrant. That clearly shows that the Legislature did not intend to bring it under the corrupt practice. The reason for this to my mind appears to be that such disturbances have, if at all any, a temporary effect of creating breach of the peace or of public order and that is why a disturbance in an election meeting cannot be treated as tantamount to the corrupt practice of undue influence by any stretch of imagination. It would be a far-fetched conclusion to draw that such disturbances constitute interference with an electoral right, as is urged on behalf of the petitioner.

78. Mr. Kotwal in support of the petitioner's contention relies upon the Election Tribunal's decision in Khan Bahadur Syed Hifazat Ali *Vs.* Mohammad Ashgar and others reports in Sen and Poddar's Indian Election cases, 625 at page 633. Although in that case on facts the Tribunal found that disturbances in meeting as was alleged by the petitioner in that case was created by the respondent's supporters, there is nothing in it to show that such disturbance amounted to undue influence. On the other hand, it appears that along with the above allegation it was also alleged that promise was obtained by the respondent in that case from some of his voters after reciting Kalma, a form of solemn affirmation, to vote in his favour and this mode of canvassing was rightly treated as a corrupt practice of undue influence. That appears to be the reason why on the omnibus issue No. 2 which was framed in a general form as to whether the several acts alleged against the respondent and his agents amounted to undue influence, the Tribunal returned a finding in the affirmative.

79. Then I turn to the allegations in paragraphs 8B(14) to (16) to see whether they or any of them amount to corrupt practices of undue influence. The sum and substance of the allegations in these paras is that the respondent and his workers during the election campaign exhibited posters, pamphlets and also made continuous, systematic and emotional appeal to the voters laying undue stress on the Bombay firings. It is also stated that the real facts in this respect were distorted or perverted and thereby an attempt was made to exercise undue influence over the minds of the electors. On facts I have found that the respondent and other Samiti candidates and their supporters unduly laid great stress on the issue of Police firings and the refusal of the State Government to institute judicial enquiry into them. I have also found that although they did so they were within their bounds in doing so and that it was perfectly open to an opposition party or parties to lay stress on the mistakes and sins of commission and omission, if there be any, on the part of the ruling party. In case such criticism were to be held as a corrupt practice which is prevented under the Act, I fail to see how democracy is to function. That would mean stifling the democracy itself.

80. So far as the allegations in clauses C(1), D(1), E(1) and G (1)(a) and (b) of para 8 of the petition are concerned, I have found that they are not proved and so no question as to whether they amount to corrupt practices or not survives. Hence my finding on this issue No. 3 would be in the negative.

81. *Issues Nos. 32 and 33.*—In view of the negative findings on the several issues of fact, these issues do not call for any finding. Had any of them been established, then the question would have arisen as to whether the result of the election of the Congress candidate was materially affected and whether the respondent's election should be declared void.

82. From the above discussion it is clear that the petitioner has totally failed to prove any of the grounds alleged for declaring respondent's election void. Consequently the petition will have to be dismissed.

83. As for costs, I do not see any reason to depart from the normal principle that costs should follow the event. The petition as it was originally framed was in many respects too vague. It was only when he was ordered to furnish particulars wherever they were lacking that the petitioner furnished particulars regarding some of the allegations. The petitioner also contained several wild allegations, some of which such as of bribery very serious. Majority of them the petitioner failed to establish. Hence I think it would be proper order him to pay the costs of the respondent in a lump sum of Rs. 500 having regard to the length of time occupied in the hearing of this case. Hence I pass the following order:—

**ORDER**

The petition is dismissed. The petitioner to pay to the respondent Rs. 500 by way of costs of this petition and bear his own.

ALIBAG,

(Sd.) M. S. Apte,

Member,  
Election Tribunal, Alibag.

—  
[No. 82/846/57.]  
By Order,  
A. KRISHNASWAMY AIYANGAR, Secy.

